86-70

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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Case Number 86-36001

UNITED STATES SUPREME COURT
October Term 1986

JERRY SAGE SAMMONS, Petitioner

VS.

UNITED STATES OF AMERICA,

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the 11th Circuit.

Jerry Sage Sammons
Post Office Box 568
Midway, Georgia 31320
912/884-9124
July 18, 1986

20 pp

Issue on Appeal and Question Presented

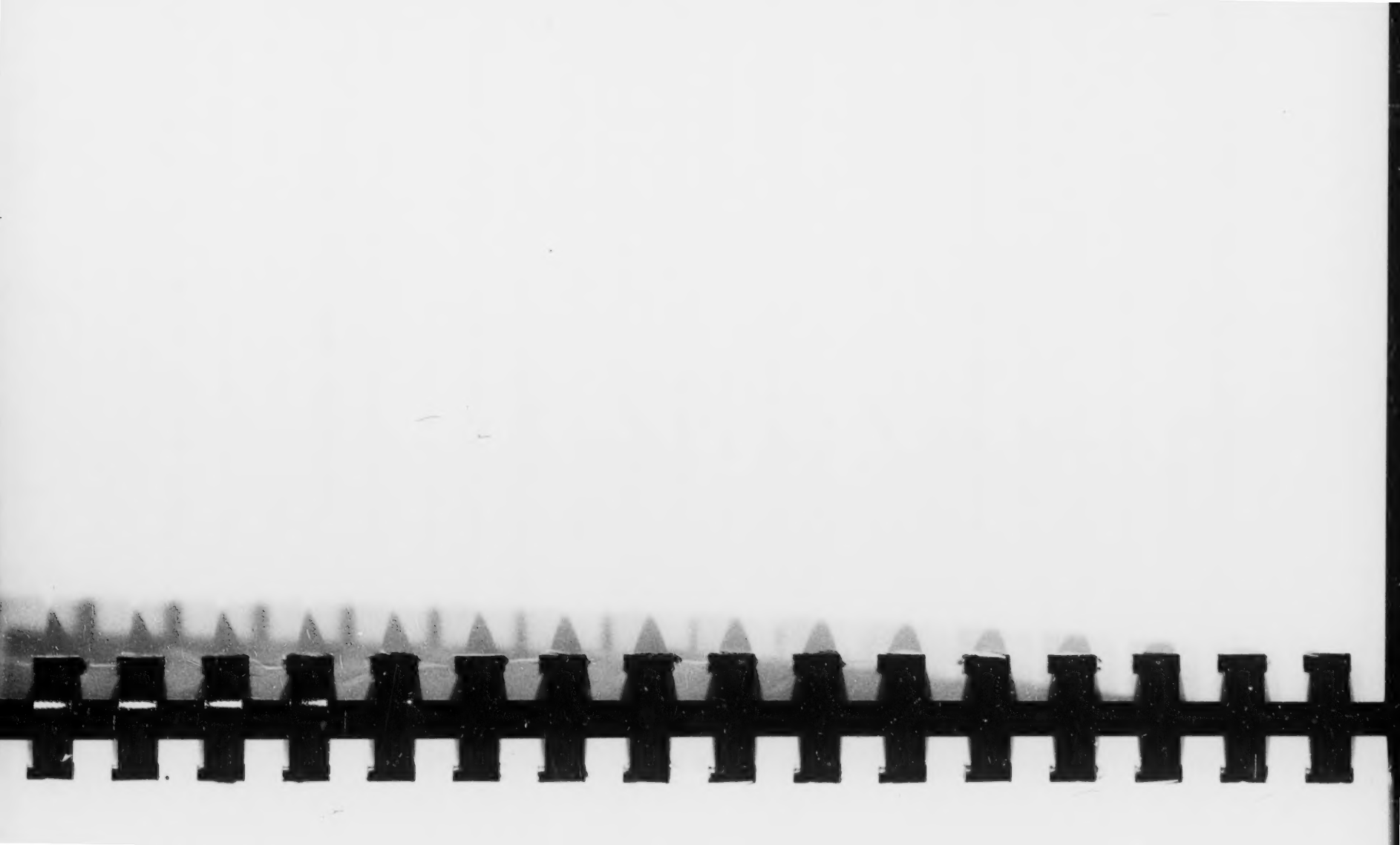
Issues:

(1) Petitioner was convicted August 23, 1985 under Title 18 Chapter 44 section 922(h)4 of receiving Interstate Transported firearms after an involuntary commitment to a mental institution. Federal Northern District Court, Tallahassee, Florida. Chief Judge William P. Stafford handed down the decision.

(2) Petitioner's appeal of supra conviction was dismissed by the 11th Circuit Court of Appeals for lack of jurisdiction, April 11, 1986 by Circuit Judge Roney and Hatchett, and Senior Circuit Judge Henderson.

(3) Petitioner was involuntarily committed to the Florida State Hospital, June 4th, 1984 in Probate Court of Leon County, Florida, Judge Victor Cawthon presiding.

Copies of supra rulings can be found in Appendix of this brief. Other information can be found on pp. 3-10 Statement of the cases and in argument of this brief.



Questions:

The first question is grounded primarily on the question is as to what extent the U.S. Constitution overrides State Constitutions. The tenth amendment of course allows our sovereign states to draw up and enforce State Constitutions. When the state is seen with a sticky hand in the cookie jar the U.S. Constitution must of necessity be the overriding authority. However, when this overriding, corrective measure is seen as punitive to the innocent citizen rather than the guilty state, (responsible party on appellant's conviction of receiving Inter-state transported firearms which the states agent per Assistant Forida State Attorney had returned said firearms to Petitioner's attorney, who then alledgedly returned firearms to Petitioner) this Supreme Court should bridle the Government's "over kill" responses. (PP. A-17 - A-22 of Appendix).

The second question is as to whether the Government itself can become the lawbreaker in attempting to set up entrapment and as to

submitting perjurious trial information in using means to achieve ends. This second question can also be expanded as to the Government's use of hearsay and other erroneous information to obtain a grand jury indictment while ignoring the U.S. Attorney's manual as to allowing appellant, defendant, target, to appear before the grand jury to refute supra described erroneous, hearsay evidence and other evidence that would exculpatate guilt of appellant, defendant, target, and avoid the clogging of our judicial system with shockingly unconstitutional and immorally wrong indictments and trials, i.e. indictment and trial of appellant. (See pp. A-7 - A-19 of Appendix.)

The third question is whether the Sovereign State of Florida can allow, without Federal Constitutional intervention, selected video-televised court proceedings at the discretion of the trial court judge in total disregard to the 14th Amendment of the U.S. Constitution as to equal protection and due process and then be disallowed as a sovereign

state the right to release former mental patients with no disabilities attached per the right to keep and bear arms by federal government intervention using Title 18, Chapter 44, Section 922(h) as in case of Petitioner.

The fourth issue questions the right of the government, or the pre-trial magistrate to violate speedy trial by unconstitutional psychiatric evaluation when a defendant or his attorney does not agree to such evaluation. This U.S. Supreme Court has not ruled on the constitutionality of supra evaluation therefore Petitioner respectfully submits that supra evaluation is in violation of the 5th amendment to the U.S. Constitution as to requiring defendant to be a witness against himself and asks this court for a ruling. This third issue cites the King James version of the Holy Bible Ecclesiastes chapter 9 verse 11. "Because sentence against an evil work is not executed speedily, therefore the hearts of the sons of men is fully set in them to do evil."

The fifth issue regards the question as to intent of Appellant to knowingly violate the law. The F.B.I., Customs, A.T.F. and the State Department were advised of appellant's trip to Honduras by appellant. A list with serial numbers was also given to customs in New Orleans, Louisiana (Mr. David Eurkin, Customs Special Export Agent), of appellant's firearms, which most assuredly indicated appellant's unawareness of the violation of the Federal statue he was convicted of. Is the government to use strict liability to shackle appellant from lawfully permitted trips abroad to areas the government covertly is actively working in? Appellant made a trip to the State Department in New Orleans in late November, 1984 and received information as to legally carrying firearms abroad and further was assured that his trip to Honduras would in no way jeopardize U.S. Government functions in the area. Is strict liability then to be used by other government agencies as the tool to deprive appellant of his lawfully permitted trips abroad?

The sixth question is, are law school professors per petitioner's F.S.U. Law School professors to be allowed to violate petitioners 1st amendmendment rights as to freedom of expression and then have both State of Florida and Federal Judiciary aid, abet and condone the disregarding of constitutional rights of Petitioner and make a mockery of our sacred U.S. Constitution and give lip service to equal protection and due process per our 14th Amendment. (See following argument as to how supra violations of petitioner's constitutional rights were violated.)

The seventh issue and question is can and was lawyer-client priviledge violated in Federal trial of Petitioner. (See pp. A-25 - A-60.)

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Appendix ..... A-1 to A-127

The Appendix shows court decisions, related motions and other pertinent information. These are included after Certificate of Service in this brief and will be sequentially numbered with the letter A preceding the number 1, then numbered consequetively, and will be so noted in the brief as attention is called to pertinent information obtained from the Appendix.

Table of Authorities

1. A.B.A. project on Standard for Criminal Justice. The Prosecution Function. See Section 3.6 (b) pp. 90, 91 (on p. 19 of this brief)

2. Anthony Galioto v. Secretary of the Treasury, Alcohol, Tobacco and Firearm No. Civ A 84-204S United States District Court, D. New Jersey 9 Feb. 7, 1985 now docketed U.S. Supreme Court - Fall Term. (p. 31 of this brief)

3. Re Beverly 342 So.2d 481 (1977)

4. Boyd v. United States, 116 U.S. 616, 627-630 (page 55 of this brief)

5. Campbell v. Stoner App. 249 So.2d 474 (1971)

6. Entich v. Carrington, 19 Howell's State Trials, 1030 (page 56 of this brief)

7. Fazio v. State, App. 399, S. 2d 432 (1981) Page 933 (on p. 9 of this brief)

8. Federal Rules of Criminal Procedure, R1.2 Notes of Commission on the Judiciary Home Report 94.2417. (on pp. 20-21 and 39 of this brief)

9. Federal Jury Practice and Instructions Dewitt and Blackman Section 1303-1304. (on pp. 22-23 of this brief)

10. Florida Statutes 1983-84 - chapter 394-394.463 (on pp. 24-25 of this brief)

11. Florida Statues annotated p. 242 Notes of Decision (on p. 28 of this brief)

12. Florida Law 1983 Chapter 394 - 394.463 (p. 25 of this brief)

13. 1983 Florida Statutes, chapter 394.467 (on pp. 28-29 of this brief)

14. Florida Rules of Criminal Procedures by John F. Yetter, S. Florida State Law Review 241 (1977) (on p. 30 of this brief)

15. Holy Bible King James Version Ecclesiastes; Chapter 9, Verse 11 (4th question of this brief)

16. Olmstead v. United States 277 U.S. 438, 48 S. Ct. 564, 72L Ed 944 (1928) (on page 54 of this brief)

17. United States v. Pedroza, 1750 F.2d 187 (11th Cir 1984) (on page 14 of this brief)

18. Petition of Pickle, app. 170 So. 2d 603 (1965) (on p. 28 of this brief)

19. U.S. Constitution specifically 1st, 2nd, 4th, 5th, 6th, 7th, 8th and 9th, 10th and 14th amendments, (throughout brief)

20. U.S. Attorney's Manual Section 9-11.252 11.253 and 11.334 (U.S. Attorney General, Wash. D.C. 1977) (on p. 18 of this brief)

21. United States v. Crombone, 602 F2d 622-623 (1979), (on page 19 of this brief)

22. Weeks v. United States, 232 U.S. 383 (on p. 55 of this brief)

Answer To Jurisdictional Question

Evidence submitted to the 11th Circuit Court of Appeals and rejected by that court can be found on p. A-124 of appendix of this petition.

Initial Brief of Appellant

I. Preliminary Statement

Appellant was the Defendant below and will be referred to as Petitioner or appellant in this brief. A four volume transcript record of appellant's Federal Trial and sentencing also is cited in this brief and will be referred to by the letter "S" 1 - 2 - 3 - 4 with the appropriate sequential numbered pages denoted in parenthesis.

II. Statement of The Case, (cases).

A. Federal Case (See pp. A-3 - A-4 of appendix this brief.)

By information filed, appellant was charged with receiving interstate transported firearms after having been committed to a mental institution, Title 18, Chapter 44 922 (h) 4. This cause proceeded to jury trial

before District Chief Judge William P. Stafford, Florida Northern Federal District Court, Tallahassee, Florida and at the conclusion thereof, appellant was found guilty as charged 7-9-85. Appellant filed motion for judgement of acquittal 7-16-85, amended 7-22-85. Said motion denied 8-21-85. Appellant was adjudicated guilty 8-23-85 and received a five year probation. A motion for retrial filed by appellant 8-30-85 was returned as being defective in form. Corrected motion refiled by appellant 9-3-85. A re-submission of said motion was filed by appellant 9-5-85 also. Motion for new trial denied 12-14-85. Appellant filed notice of appeal and paid fee 12-20-85. Motion for judgement of acquittal filed 12-23-85. Motion for reconsideration of new trial motion filed 12-23-85. Motion for dismissal of charges filed 12-23-85. Transmittal of Notice of Appeal #77 w/copies of docket sheets and J & C, 1-2-86.

In this statement of his case appellant stands unsure of the procedure facts of his

trial. Was appellant guilty at the moment the jury returned a verdict of his guilt or was he guilty when the Chief Judge of the Northern District Court handed down a verdict of guilty. Appellant was denied motion for retrial because said motion was deemed not received in a timely fashion allegedly because defendant did not file said motion within 7 days of juries returning verdict of guilty. As noted supra adjudication of guilt was handed down 8-23-85 with advice from both Chief Judge Stafford and assistant U.S. Attorney Ross Nabatoff that appellant had 10 days from this date to file appeal notice (See p 29 of sentencing transcript). Appellant responded to this appeals court jurisdiction question, filed 2-21-86.

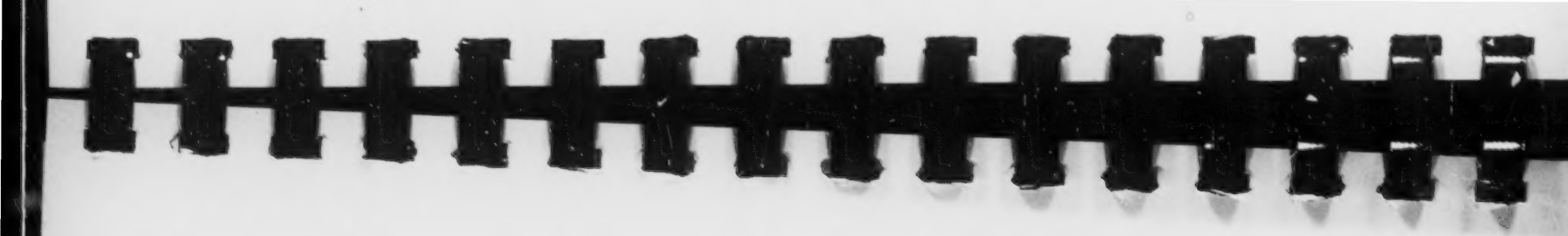
B. State of Florida Case (See pp. A-5 - A-6 of appendix this brief)

In compliance with Rule 21, point 1, paragraph (h), Petitioner submits: On May 17, 1984 petitioner was arrested by F.S.U. police, Tallahassee, Florida on a charge of misrepresenting an application to carry a concealed weapon permit in Leon County. Petitioner was then "Baker Acted" under Florida Law Chapter 394, June 4, 1984 and involuntarily committed to the Florida State Mental Hospital, June 5, 1984.

(a) Florida law under Chapter 394 at the time of Defendant's arrest May 17, 1984, allowed the State 72 hours for a detention evaluation Chapter 394.463 reads,

"Evaluation by a receiving facility -- A patient may be detained at a receiving facility for an examination only 72 hours."

This state law was changed by the legislature and took effect January 1st, 1985, to allow the State 5 days for such examination. Defendant was arrested May 17th, 1984, and transported to the Florida State Hospital May



18th, 1984. Defendant was then held at this facility, which by a counsel for the Florida Department of Health and Rehabilatative Services admission was not an appropriate and or legal receiving facility for evaluation, from May 18th until May 25th, 1984, at which time committment papers were unlawfully signed.

(b) Under Florida Statues Annotated page 242 notes of decision:

(1) In General --

A person in restraint of his liberty is entitled to liberation where reasonable doubt exists as to his mental condition. See petition of Pickles, App. 170 So. 2d 603 (1965). There was a difference of opinion among the mental health evaluators at his unlawful State detention May 18th until May 25th, 1984 as to the need for mental health commitment. (see p. A-5 and A-105 - A-107 of appendix in this brief)

(c) Under Florida Law 394.467

Grounds for Commitment:

"Fact to be weighed in making determination of incompetency is not whether individual needs psychiatric treatment, but whether he is incapable for caring for himself or managing his property. Campbell v. Stoner, App. 249 So. 2d 474 (1971)."

Defendant respectfully submits that he has never been adjudicated incompetent yet was unlawfully involuntarily incarcerated in the Florida State Hospital from May 18th until May 25, 1984, and then unlawfully involuntarily committed to the same institution from June 6th until September 19, 1984.

(d) Under 1983 Florida Statues Chapter 394.467 for involuntary placement under which Defendant was unlawfully involuntarily committed to the Florida State Hospital, Defendant respectfully submits the following:

Sub (b) "It is more likely than not that in the near future he will inflict serious unjustified bodily harm on another person, as evidenced by behavior causing, attempting, or threatening such harm, including at least one

incident thereof within 20 days prior to the iniation of the proceeding for involuntary placement."

Defendant respectfully submits that no evidence was given at his probate hearing for involuntary placement on June 4th, 1984, or at his federal trial now appealed, that confirmed any overt threat of harm made to anyone by Defendant.

(e) Under Florida Statue 394.467 (1985) notes 11 Wrongful Confinement, Defendant respectfully submits:

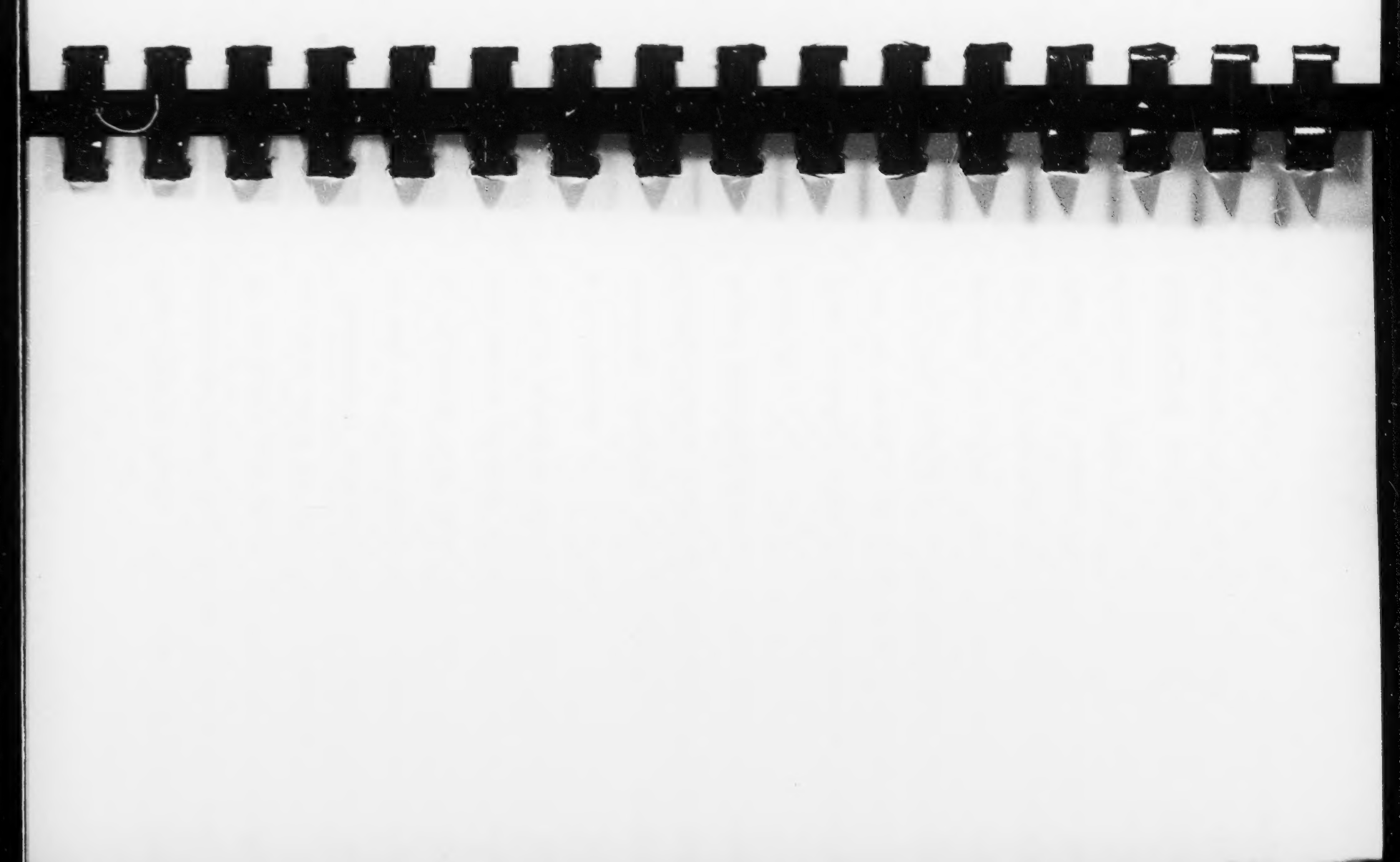
"Involuntary commitment proceedings in Circuit Court, were defective under applicable statutes and were unconstitutional, Fazio v. State, App. 399 So. 2d 432 (1981) page 433 --- Failure to adequately document the nature and extent of the illness as required by section 394.467 (3) Florida Statues; failure to record the hearings so that an effective mode of review is obtainable; and failure to provide the least restrictive alternative available for the proper treatment and care of appellant.

The courts must afford all persons their constitutional and State rights be they --- or alleged mentally incompetent persons, as in this case or any other person."

Defendant respectfully submits that he has no way of reviewing his records in the equal protection and due process way the 14th Amendment allows in that he was not advised by his counsel of his right to video taped proceedings of his State court Baker Act, Florida Chapter 394 proceedings. Defendant respectfully submits televised and video taped proceedings are allowed in the State of Florida.

Also please see Florida Statue Section 394.467 Note 2 on Page 202 (1985).

"In order to conclude that mentally ill person is likely to injure himself or others, and is therefore subject to involuntary commitment under this section, judge must conclude that such threat of harm as to comprehend positive infliction of injury; ordinarily, this would refer to physical injury, but this section contemplates



inflection of emotional injury also. In re Beverly, 342 So. 2d 481 (1977)."

As Defendant testified in his federal trial, now appealed, no such threat was made, alleged by witness, or even confirmed as hearsay evidence.

III. Statement of the Facts

Fact 1: Agents of the Alcohol, Tobacco and Firearms Department of the U.S. Government along with Sgt. Taylor of the F.S.U., (Florida State University) police and deputies of the Leon County Sheriff's department entered apartment of appellant, in his absence, December 6, 1984 and seized items, among which were a 357 magnum stainless steel revolver and a 38 caliber revolver allegedly received by appellant after his release from the Florida State Mental Hospital September 19, 1984. Said weapons were at the time of seizure allegedly located in a closed and clasped foot locker inside a secured closet of appellant's apartment.

Fact 2: Supra described seized weapons were in fact the weapons illegally seized, and/or voluntarily surrendered to and/or by the Florida State University Police without a search warrant in their arrest of appellant May 17, 1984 in Tallahassee, Florida. Arrest of appellant by the FSU police was made

without Mirandi rights being read to Appellant. Said illegal seizure and/or voluntary surrender of appellant's weapons was made after appellant requested and was denied right to call counsel (confirmation of supra facts can be made from government witnesses testimony at Petitioner's federal trial on pp. A-13 - A-18 of appendix.

Supra noted weapons seized by U.S. Government agents and others December 6, 1984 were not admitted as to being received by appellant at the Federal trial now being appealed. Said weapons returned by FSU police upon directions of State of Florida Assistant District Attorney, Mr. Joe White, to appellant's attorney Mr. Joe Jacobs, Tallahassee, Florida, were not admitted to at Federal Trial of appellant as having been returned to appellant by supra attorney (Mr. Jacobs).

Fact 3: The assistant U.S. Attorney, Mr. Ross Nabatoff, secured testimony from manager of the Outdoor Shop of Tallahassee Florida that appellant had brought weapons into said shop on or about November 27, 1984. Upon

cross examination, supra noted Manager of the Outdoor Shop admitted that no serial numbers of supra noted weapons were obtained, thereby admitting to his inability to confirm that weapons seized by the Government were in fact weapons brought into said Outdoor Shop. The Government was in fact at this point guilty of perjury. (See p. A-112 - A-113.)

Fact 4: The Government submitted at sentencing that a certain FSU college of law professor had sworn that appellant had said to him that appellant was going to "blow up" the law school and "kill" one or more professors. This professor had appellant's attorney state in Court that in fact no such statement was made to or by him, (see pp. A-86 - A-86). Once again the U.S. Government was guilty of perjury.

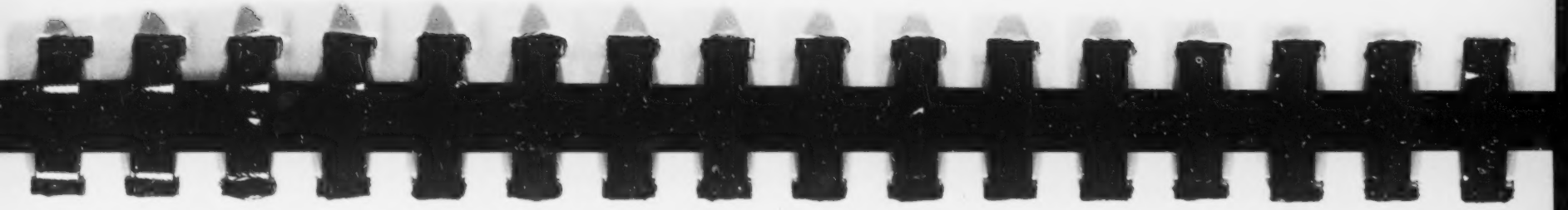
Fact 5: The U.S. Government per statements made by their witness from the Federal Alcohol, Tobacco and Firearms department, under oath said that appellant was removed by agents of the U.S. Customs department from an airplane in New Orleans, Louisiana bound for

Honduras (see p. A-65). No such evidence was ever produced by the U.S. Government, due, of course, to the fact that no such event ever occurred. Once again, the U.S. Government was guilty of perjury. It is most unfortunate that supra noted hearsay evidence was allowed by Judge Stafford and not contested to admission of said hearsay evidence by petitioner's attorney. The following cite is from the 11th Circuit Court of Appeals that dismissed petitioner's appeal on jurisdictional grounds. United States v. Pedroza, 1750 f. 2d 187 (11th Cir. 1984). "The admission of hearsay statements is inappropriate where the declarant does not reiterate the statements, or provides the jury with inadmissible material that they would not have otherwise have had. It is also inappropriate when the declarant does testify since the hearsay testimony serves to bolster the testimony of the declarant."

Fact 6: The U.S. Government submitted the supra noted testimony and countless others, at appellant's pre trial hearing that were

broadcast abroad in the Tallahassee Democrat, (local Tallahassee newspaper) which refused a letter requesting retraction of supra noted erroneous information sent to them by appellant while he was incarcerated in the Federal Corrections Institute in Tallahassee Florida prior to indictment of appellant by the Federal Grand Jury (pp. A-64 - A-77). Several articles naming petitioner and calling attention to information, (which was erroneous as to fact), were published in the Tallahassee Democrat along with an ill-disguised repeated editorial attack on those seeking gun control changes. These articles influenced jurors both Grand and trial of petitioner. This court has recently held that adverse publicity by the news media was grounds for new trial, (Alday case cite not available). Petitioner respectfully submits that he had ineffective representation when his attorney did not move for new trial on the supra grounds.

Fact 7: Appellant and/or his attorney was denied right to testify to the Federal Grand



Jury concerning exculpatory evidence as required by the U.S. Attorney's manual. Also as to fact, appellant was denied right to grand jury testimony by the Government that allowed hearsay and potentially erroneous information to be submitted to the grand jury that encouraged an indictment of appellant. See A-48 of this brief Appendix (trial transcript) where the assistant U.S. Attorney cleverly kept Government information In Limine alluding to a darker side and or offense that appellant was guilty of. Please note the respected trial court judges words to the assistant U.S. Attorney on A-48 of supra transcript, "what in the world is this prosecution about". Appellant respectfully submits that not only was he and his attorney denied rights directed by U.S. Attorney's manual to assistant U.S. Attorney as noted supra, but the jury and court at appellant's trial were denied Government information. Please see appellant's argument in this brief for further questions on this matter. The following comes from petitioner's denied

motion for retrial submitted to the Federal Florida Northern District Court.

"Grand Jury indictments were presented after erroneous information was allowed to be presented to that respected body without the presence of Defendant or his attorney, to refute such erroneous information. Defendant respectfully submits that his unconstitutional involuntary incarceration for observation at the federal facility at Springfield, Missouri, prevented his presence at the grand jury indictment but that his attorney was present in Tallahassee at the time of Defendant's indictment and did not attend said indictment, which denied petitioner equal protection and due process per the 14th Amendment to the U.S. Constitution. Defendant begs leave to submit an article from the practical lawyer's manual on Criminal Law and Procedure:

"Since 1977, the Department of Justice Guidelines for the United States Attorneys have expressly provided that under normal circumstances, where no burden upon the grand

jury or delay of its proceedings is involved, reasonable request by a 'subject' or 'target' of an investigation . . to testify before the grand jury ordinarily should be given favorable consideration . . " United States Attorneys' Manual Section 9-11.252 (U.S. Attorney General, Washington, DC, 1977).

A related guideline provides that in the absence of a perspective defendants request to testify, the prosecutor in appropriate cases, is encouraged to notify such person a reasonable time before seeking an indictment in order to afford him an opportunity to testify . . Id. Section 9-11.253. Defendant respectfully submits that he was not notified of such indictment proceedings or given the opportunity to testify at said indictment by the U.S. Attorney.

Mitigating Circumstances and exculpatory evidence was not presented to the grand jury by the U.S. Attorney that the United States attorney's manual specifically notes should be presented to the grand jury by the U.S. Attorney, an obligation required by the supra

manual. The U.S. attorney's manual specifically notes the prosecution's obligation to present or disclose to the Grand Jury evidence which directly negates the guilt of the subject. See U.S. attorney's manual 9-11.334 presentation of Exculpatory Evidence. See also Section 3.6 (b) of the A. B. A. project on Standards for Criminal Justice. The prosecution function prescribes a broader standard: "The prosecution should disclose to the Grand Jury any evidence which he knows will lend to negate guilt."

In United States v. Crombone, 601 F2d 622-623 (1979), the second Circuit cited the A. B. A. Standard in its formulation of a somewhat narrower rule: "where a prosecutor is aware of any substantial evidence negating guilt, he should in the interest of justice make it known to the Grand Jury, at least where it might reasonably be expected to lead the jury, not to indict." See A B A Project on Standards for Criminal Justice - The prosecution Function, Section 3.6, pp. 90-91.

Defendant respectfully begs leave to submit to this Honorable court that but for an unlawful and or inappropriate Grand Jury Indictment there could not have been a trial of Defendant."

Fact 8: Speedy trial ran on appellant's trial inasmuch as the U.S. Attorney per instructions of U.S. Magistrate Everett Anderson, Tallahassee Florida's order transferring appellant to the U.S. Federal Hospital in Springfield, Missouri for evaluation as to sanity of appellant without valid probable cause to do so, in defiance of U.S. Judiciary's report. Said evaluation was also a denial of appellant's 5th amendment rights as to not being a witness against himself. The following statement is taken from the Federal Rules of Criminal Procedure, R 1.2 notes on commission on the Judiciary Home Report 94.2417:

An amendment proposed by Supreme Court. "If the defendant fails to undergo the court-ordered psychiatric examination the court may exclude any expert witness the

Defendant offers in the issue of his mental state".

Petitioner submits that it has never been his intention to offer any statement as to his mental condition.

"The committee notes that the rule does not attempt to resolve the issue whether the court can constitutionally compel a defendant to undergo a psychiatric examination when the defendant is unwilling to undergo one. The provisions of sub (c) are qualified by the phrase, 'In an appropriate case'. If the court cannot constitutionally compel an unwilling defendant to undergo a psychiatric examination, then the provision of sub (c) are inapplicable in every instance where the defendant is unwilling to undergo a court ordered psychiatric examination. The committee by its approval of sub (c) intends to take no stand whatever on the constitutional question".

Petitioner, however, begs this court to take a stand on the constitutional aspects of the supra committee notes inasmuch as

defendant was sent against his will to the Federal Facility at Springfield, Mo. for psychiatric evaluation. Also the legislative branch of our government had enacted law which was in effect which allowed a maximum of 45 days for supra evaluation. The federal magistrate in Tallahassee, Florida that forced petitioner against his will to be transported to the Federal Facility in Springfield gave the officials there up to 100 days for supra evaluation. This was in defiance of law that was enacted and in effect.

Both and or either of the two supra points submitted by petitioner it is respectfully submitted allowed speedy trial to run on the U.S. government's case. Petitioner was kept at the Springfield, Mo. facility from Dec. 27, 1984 until in or about March 7, 1985. Petitioner's arrest on the federal charge was Dec. 13, 1984.

Fact 9: Appellant's attorney did not submit or was denied right to do so, two jury instructions requested by appellant, (a)

ignorance of the law and (b) specific intent. See Federal Jury Practice and instructions Devitt and Blackman section 13.03-13.04. This is but another example of ineffective representation of counsel that appellant has been subjected to since his state arrest May 17, 1984.

Also note how during trial of petitioner, petitioner's counsel became so preoccupied with defending the government witness Mr. Joe Jacobs, [prominent Tallahassee attorney and close personal friend of petitioner's attorney of record at the time, Mr. James Mahorner. Mr. Jacobs had allegedly returned firearms to petitioner when he was counsel for petitioner's state of Florida actions (May 17, 1984 - Oct. 1984)], that he in fact became co-counsel for the government, (government witness), leaving petitioner without effective representation (pp. A-25 - A-60).

Argument

What is this United States Supreme Court to do when such an obvious and shockingly apparent miscarriage of justice has occurred

as evidenced in the case of appellant. Appellant has all but shrugged off his past belief of and confidence in his rights as a citizen of this beloved and magnificent Democratic-Republic that historically has had and continues, albeit shakily so now, to have its foundation on the Judeo-Christian Faith and its absolute dependence on the God inspired Sacred Constitution of these, sometimes fragmented, United States of America. Appellant respectfully now submits points to have this court overturn his recent conviction of receiving interstate transported firearms after having been committed to a mental institution:

Point 1: Appellant's Florida State mental institution commitment was unconstitutional:

The State of Florida violated several parts of its own Mental Health Act Chapter 394 at appellant's horribly unlawful Florida State arrest and commitment May 17, 1984, which was the 1983-84 version of State law which the Florida Legislature changed in part after appellant was released from the Florida State

Mental Hospital, September 19, 1984. New law did not take effect until January 1985.

See the following Florida Statutes 1983-84.

(1) Chapter 394.463

"Evaluation by a receiving facility ... a patient may be detained at a receiving facility for an examination only 72 hours". This state law was changed by the legislature and took affect January 1st, 1985, to allow the State 5 days for such examination. Petitioner was arrested by the Florida State University police several miles from the FSU campus, (petioner's attorney and several members of the law enforcement community in Tallahassee expressed doubts as to the legal right of the FSU police to make such arrest short of a hot pursuit, several miles off the grounds of the FSU campus), May 17, 1984. The two psychiatrists that petitioner was "interrogated" by several hours after his arrest would not agree to confinement without further tests. Petitioner was then taken to the Leon County jail where for the first time he was informed

of the crime that he allegedly had committed and been arrested for, at 5 p.m. some 6 hours earlier. This was also the first time that petitioner was allowed one call to counsel. Due to the late hour petitioner was unable to reach counsel, the counsel that petitioner had requested at the time of his arrest several hours before but was denied this constitutional permitted right. Petitioner was arrested by the FSU police while he was preparing for his next day of classes at the FSU College of Law. Some 10-15 men with shotguns and drawn revolvers surrounded his apartment which was as noted supra several miles from the FSU campus.

The statement made by Sgt. Taylor, (one of the arresting FSU police officers at the State arrest of Petitioner May 17, 1984), during petitioner's federal trial to the effect that petitioner was advised of the Florida Baker Act at his arrest May 17, 1984 is a perjurious, malicious lie. Petitioner consistently in response to his question as to what the arrest was for or about, was

advised by Sgt. Taylor and Sgt. Outen (FSU police officer in charge of the arrest), that "we will advise you of that and allow you to call counsel when we get to the "station". Petitioner was not so advised at the "station" nor was he allowed to call counsel. Petitioner had no idea that he was being arrested by FSU police nor that the "station" he was being transported to was the FSU police station. Petitioner sat in this "station" for an hour while the FSU police sought to get Baker Act court orders from Judge Charles Miner of Leon County. This after two pistols and a rifle had been removed from petitioner's apartment <u>without search warrant</u> by the FSU police. If this is not an unforgivable example of violations of both 4th, 5th, and 6th amendment rights of petitioner, then we have no U.S. Constitution any longer. Or perhaps petitioner has been adjudicated a disenfranchished person without constitutional rights, much the way the 11th Circuit court of appeals, that refused petitioner an appeal, has passed judgement on

the Cubans in the Atlanta Penitentiary, (where petitioner was incarcerated in the D ward with the Cubans for two days after leaving his unconstitutional incarceration in the Federal Facility at Springfield, Mo.,

(2) Under Florida Statutes annotated page 242 notes of decision:

In general .. a person in restraint of his liberty is entitled to liberation when reasonable doubt exists as to his mental condition. See Petition of Pickles, App. 170 So. 2d 603 (1965). This respected U.S. Supreme Court will note from petitioner's present federal trial records that there was a difference of opinion among the mental health evaluators at his unlawful state detention May 18th until May 25, 1985, as to his need for mental health commitment.

(3) Under 1983 Florida Statutes chapter 394.467 for involuntary placement under which petitioner was unlawfully involuntarily committed to the Florida State Hospital petitioner respectfully submits the following:

sub (b) "It is more likely than not that in the near future he will inflict serious unjustified bodily harm on another person as evidenced by behavior causing attempting or threatening such harm, including at least one incident thereof within 20 days, prior to the inaction of the proceedings for involuntary placement".

Petitioner respectfully submits that no evidence was given at his State of Florida probate hearings for involuntary placement in Leon County, Florida on June 4, 1984 or at his federal trial now appealed that confirmed even an allegation, (hearsay evidence), of any overt threat of harm made by petitioner.

Petitioner points out that the Florida Legislature of 1984 removed the 20 day requirement to the supra statutes effective January 1, 1985.

As to the two supra statues that the Florida Legislature changed in its 1984 session, petitioner submits that he was in his second criminal law class under professor John Yetter of the Florida State College of

Law at the time of his illegal State of Florida arrest May 17, 1984. Please see Florida Rules of Criminal Procedure 1977 amendments by John F. Yetter. S. Fla. State Law Review 241 (1977)

Petitioner begs this U.S. Supreme court to make whatever association it deems appropriate between Professor John Yetter and the supra noted Legislative changes under Florida Chapter 394 and petitioner's involuntary commitment to the Florida State Hospital which also might involve investigating how Professor Yetter had allegedly said that Petitioner had said to him that Petitioner was going to blow up the law school and kill one or more professors. This court will note from Petitioner's federal sentencing that Professor Yetter had Petitioner's attorney swear for him in court that he in fact supplied the government no such information. No such ridiculous statement as alleged supra by the government was ever uttered by Petitioner to any FSU professor or student.

Point (1) sub (a): Title 18, Chapter 44, sub 922 (h) 4. under which appellant was indicted and convicted is unconstitutional. Petitioner cites Federal District Court case in the United States District Court, New Jersey, recently heard by this court, to substantiate his belief that the aforementioned portion of Title 18 is unconstitutional, Anthony J. Galioto v. The Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

Petitioner begs leave to submit to this respected court certain violations of the U.S. Constitution that the Federal District Court in Galioto did not address, and which may not have been viewed by this United States Supreme Court when Galioto's oral arguement was heard recently by this court.

Defendant, citing his own voluminous petitions since May 17, 1984 as corroborating proof, submits that the respected United States Supreme Court has never ruled on the question as to the constitutionality of an involuntary mental examination and/or

evaluation of a person. Defendant submits that a person can be involuntarily examined at the Federal Medical Center in Springfield, Missouri for a period of time, then be remanded back to custody or released from custody, without having the stigma of mental health "commitment" attached to him. This means that a person charged with a felony crime could go to Springfield, be observed (evaluated), be deemed to be suffering from some degree of mental illness (most members of society are), return to his admitting court, be sentenced for a felony crime, serve sentence and then be released and have the Secretary of the Treasury remove the disability of the felony and then be allowed to acquire firearms as in the State of Florida.

The person who has been "committed" to a mental institution, in many cases stays the same amount of time or less than the felon who was sent to the Springfield Medical Center for mental evaluation, <u>can never for the rest of his life</u> have the stigma and

related disabilities removed by the Secretary of the Treasury. We must keep in mind that in order for persons to be released from either a state hospital or the Federal Medical Center at Springfield they must be determined by the evaluating mental health professionals to not demonstrate a mental health problem that would indicate harm to others or self. In many states former "committed" individuals are then allowed to obtain and possess firearms.

Is the state to control mental illness, or is the federal government to be allowed to violate the 9th and 10th amendments of the U.S. Constitution, and encroach on state rights and control? It is necessary for Petitioner to point out and respectfully submit to this Supreme Court that where there is gross unequal treatment between a state "committed" person and a federally mentally "evaluated" person, this gross violation of our sacred constitution should not be allowed to exist.

Defendant respectfully submits that the stigma of mental illness should not be allowed to be permanent disability when there are so many differing interpretations of what "mental illness" is exist, and where there are so many adversarial expert witnesses that can be allowed to testify with differing opinions as what degree of "mental illness" a person is afflicted with, without the sacred constitutional right to a trial by jury being allowed.

Appellant respectfully submits that he violated no state of Florida law when he allegedly received firearms that were unconstitutionally seized from him by the FSU police May 17, 1984. Further, appellant respectfully submits that before Chief Judge Stafford's order pertaining to appellant's sentencing, appellant could have been in possession of firearms transported in inter-state commerce without receiving them by simply unlocking containers that weapons acquired by Appellant were secured in prior to his state incarceration and not be in

violation of Federal law as to receiving interstate transported firearms.

Appellant could have also obtained by reception and possess firearms manufactured within the State of Georgia and Florida, within said states respectively, and not have been in violation of the Federal law he is now charged with.

If this is equal protection and due process, then we have no Fourteenth Amendment to the U.S. Constitution worthy of the name. If the State of Florida can exercise State Mental Health Laws and then be disallowed by the Federal Government from applying those laws to citizens within its boundaries as to allowing a citizen to be rehabilitated to full citizenship and rights as to reacquiring firearms, then our Tenth Amendment to the U.S. Constitution is also made a mockery of when it is tied to equal protection and due process of the Fourteenth.

The legal law constructors of our U.S. Congress have not contended that a person must transport or possess interstate

transported firearms to be guilty of a gun control law per gun control violation law appellant is now charged with, only that the citizen cannot receive a weapon that has at some point, remote or recent, been transported in Interstate Commerce

Point 2: The confiscation of appellant's weapons by the FSU police, May 17, 1984 in Tallahassee, Florida, it is respectfully submitted was either, (1) an illegal seizure made without a search warrant on (2) weapons taken into "protective custody" after alleged voluntary relinquishment by Appellant only after appellant's Sixth Amendment right to call counsel was denied. Appellant respectfully submits it is moot as to which of the two supra noted ways his weapons were acquired by the FSU police. Both were illegal means of acquisition of Appellants firearms by the FSU police (see pp. A-13 - A-18 of appellant's trial transcript), per the U.S. Constitution amendments 4 and 6.

Appellant therefore respectfully submits that he could not have received firearms that

never left his constructive possession. Appellant submitted a motion to suppress supra noted firearms at his recent Federal Trial, the Honorable Chief Judge for the Florida Northern District Court denied said motion.

Also see transcript of appellant's trial volume S2-57 where Sgt. Taylor of the FSU police, that illegally seized appellant's firearms used by the Government to convict Appellant admitted that he did not log in firearms illegally seized from appellant May 17, 1984. Sgt. Taylor admitted that weapons illegally seized were not logged in and or photographed until the next day. They were left overnight on his desk at the FSU police station, where they could have been pilfered or replaced by other like weapons.

Point 3: Trial of Appellant should be overturned because of shockingly inappropriate conduct of the U.S. Government relating to pre-arrest attempted entrapment and later perjurious testimony of Government

witness during trial of Appellant., See p S4-21 of appellant's sentencing transcript.

Point 4: The U.S. Government was aware of exculpatory evidence, per the alleged return of firearms to Appellant by the State of Florida and appellant's private attorney who had, as had appellant, indicated to the U.S. Government an unawareness of Federal law that prevented such alleged return of appellant's firearms to appellant, yet the U.S. Government in flagrant disregard of the U.S. attorney's manual denied appellant right to appear at his grand jury indictment, to present such exculpatory evidence, and further did not indict the State of Florida per the Asst. State Attorney that returned appellant's firearms to appellant's attorney, or appellant's attorney that allegedly returned firearms to appellant.

Point 5: Speedy trial had run on the U.S. Governments case at the trial of Appellant:

When Appellant was, without consent of same by himself or his attorney or justification for same, transported to the Federal Hospital

in Springfield Mo. for psychiatric evaluation, this was to violate appellant's right against self incrimination per the 5th amendment to the U.S. Constitution and in defiance of U.S. Supreme Court Judiciary report which did not authorize such observation when insanity was not an element of defense. (Table of Authorities #6 this brief)

Point 6: When the Federal Government allowed, encouraged and sought perjurious testimony to achieve its ends by unlawful means Appellant begs this court to hold that our Government itself became the lawbreaker in achieving the conviction and deprivation of freedom of Appellant. Please note how the Department of Alcohol, Tobacco and Firearms further tainted their case against Appellant after an attempt at entrapment made by them failed when they called appellant's aged mother in Savannah, Georgia on or about Dec. 5, 1984, (agent Joe Mogno) and informed her that she could advise appellant to come to Jacksonville, Florida to pick up a weapon recovered by the A.T.F. in Georgia after it

was stolen form appellant's home at Tybee Island, Georgia on or about August of 1983. Said theft was reported to the Tybee Island police by appellant's son while Appellant was in Quito, Ecuador with a group from Georgetown University attending classes at Catholic University in Quito.

This unforgivable attempt at Government entrapment was not successful inasmuch as Appellant was in Tegueugalpa, Honduras at the time, however, Appellant respectfully submits that if said recovered stolen weapon, an Ingram Mac 10 manufactured in Georgia, had been returned to Appellant in Georgia where the ATF recovered and retained it after Appellant had requested that it be returned to him in Georgia, there would have been no Federal violation of receiving Interstate transported firearms after being committed to a mental institution. The absurdity and unequal protection of such law that allows a mental patient to be committed, released and receive weapons manufactured within a state so long as the weapon has never crossed state

lines displays legislative impropriety, disarrayed even further by judicial encroachment of and disregard of the U.S. Constitution when conviction of such unforgivable violation of the 5th, 9th, 10th and 14th amendments of the U.S. Constitution is allowed.

The Chief Judge for the Northern Florida District Court expressed his opinion of this matter when he informed appellant at his sentencing hearing that he was not concerned about the transgressions of state law by the state of Florida that resulted in appellant's unlawful incarceration in the Florida State Hospital from May 18, 1984 until May 25th 1984 and commitment to that facility in total disregard of state law, from June 6th 1984 until September 19, 1984. Appeal of said commitment was not made by appellant's attorney of record, Mr. Joe Jacobs, Tallahassee, Florida in a timely manner, (within 30 days), and so the gong show was allowed to go on.

Point 7: Can the state of Florida unlawfully incarcerate a citizen of these United States, release him, allow him to have firearms again, and then have the Federal Government which ostensibly does not allow unconstitutional incarceration of a person, move in and further add to the unforgivable unlawful and immoral trespass upon the rights of a citizen by depriving him of freedom based upon a catch 22 legislative battle between States Righters and Federalists. Such an exercise, appellant respectfully submits is in total mockery of our 10th and 14th amendment rights of the U.S. Constitution.

Point 8: Is a citizen to be deprived of his freedom based on lies maliciously inflicted by his adversaries? Thus far the answer overwhelmingly in appellant's case has been in the affirmative. Can the State of Florida violate its own laws in depriving a citizen, within its boundaries, of freedom? This answer thus far also must be answered in the affirmative. Has appellant no recourse when

this horribly unjust action is taken by the State? Has appellant been deprived of a solution and or resolution of this injustice because his attorney did not appeal appellant's unlawful commitment to the Florida State Hospital? Is the State of Florida to be allowed to deprive a citizen of these United States freedom at will and in defiance of and contempt for our Sacred United States Constitution?

Point 9: Petitioner's letter sent to certain professors at the college of law, scant days before he was incarcerated by FSU police, and signed "Charter Member Republican Presidential Task Force" displayed a simple minded belief that the 1st amendment rights as to freedom of expression could not be violated even by Law School professors. Appellant's adversaries could not and did not allow such an intrusion of their turf however, as they pounced upon appellant. They displayed an unforgivable contempt for our legal bible, the U.S. Constitution as it relates to freedom of expression. A copy of

Petitioner's hard line conservative legal beliefs per copies of Petitioner's law review competition article also was viewed unfavorably by the liberal element of this faculty and an example was made per Petitioner's immoral and illegal State and later Federal incarceration.

Point 10: Did appellant have ineffective representation of counsel at the Florida State court proceedings that resulted in appellant's commitment to the Florida State Hospital, a commitment which is now an essential component of the Government's case that appellant now appeals. Supra and following points and facts will provide this answer.

Point 11: Is the State of Florida to allow video taping and televising of only selected legal actions within the state? The question can be answered, by answering a question that must be tied to it. Do we have a 14th amendment as it relates to equal protection and due process in our U.S. Constitution any longer? Appellant was not given the

opportunity for such invaluable video taped and or televised records during his State of Florida Civil commitment proceedings that were tied like a sinner's knot to appellant's State Criminal proceedings, now nolle prosequi by the State of Florida. Neither the State of Florida nor appellant's private attorney advised that appellant had such rights. Was this an example of State police power being exercised in contempt of the U. S. Constitution or was it an example of despicable further ineffective representation of counsel.

Recent events on our world scene have shown even sub level idiots the awesome power of the televised media. The shameful defeat our courageous men and women in the military had forced upon them by a liberal news media in Vietnam is but the tip of a cancerous disease that has been unleased upon our citizens in this, our sacred and God inspired Republic. Television has now given our ungodly adversary the Phillipine Republic without a valid defensive shot being fired. It now

seems Central America will be next if the socialist - quasi communist element in our televised news media have their way.

While in my senior undergraduate year at Armstrong State College in Savannah, Georgia, four years ago, I was fortunate enough to be enrolled in a journalism course that at mid quarter allowed half my class to enter into a short five week television reporting work shop. It was an educational experience that removed scales of unawareness from petitioner's eyes. The frequent use of snaps, cuts, splices and injections to present a televised story in a fashion so that the story is totally rearranged and then shown back in such completely uncontexual occurrences that the original scenes would be hard to accept as factual even by the person video taped.

Petitioner feels sure that all members of this Supreme Court have witnessed satellite programs such as C Span recently. Appellant seriously questions, however, whether all members of our Federal congressional bodies

have viewed such programs. If they had done so perhaps they would have had second thoughts about the wisdom of allowing televised legislative proceeding. The disillusionment and mockery of elected leaders by viewers is a sad thing to behold and many believe it to be only an expression of contempt that is long overdue in its coming. It is also seen by many as but a backlash by a citizenry that has been manipulated and all but held in contempt by an elected elite. A recent call in by C-Span viewers all to frequently used the term "clowns" to describe our televised congressional bodies.

In order for our democracy to survive and to maintain a absolutely necessary separation of powers, many believe that in order for citizens to maintain and keep respect for our judicial body the clown show must not be allowed to enter into our courts.

The state of Florida of course allows televised and or video taping of certain judicial proceedings at the discretion of the

trial court judge. The jury system cannot remain impartial if the message of television is allowed to be imprinted on jurors and or potential jurors. A controversial case and or one of long duration, will appellant respectfully submits, be won or lost in the courtroom in name only, the true manipulator will, of course, be televised-video taping.

When a citizen is denied video taping of state proceeding the citizen will be deprived of equal protection and due process per the fourteenth amendment. Evidence of this will never be more apparent than in the case of Appellant, where physical attributes of Appellant were described as being intimidating to his adversaries, an element of the FSU college of law professors, that instituted actions to have Appellant arrested on a sham criminal charge and then committed, after hearsay, and other unforgivable misrepresentation of fact were submitted to mental health evaluation, to the Florida State Mental Hospital, May 18-25, 1984 and then from June 5th until September 19, 1984.

A video taping of appellant's state of Florida probate hearing would have been invaluable then and now as a proper recording of his hearing. In addition to assisting appellant in refuting supra described frightening physical attributes appellant could now substantiate statements made by the psychiatrist present at appellant's probation. Said psychiatrist described appellant's private attorney ostensibly, one of the most brilliant legal minds in this country, Mr. Joe Jacobs, as being in the psychiatrist's words "simply incompetent". Appellant respectfully submits that he has no way of viewing this absurd performance now, (probate hearing), in that he was denied or was not advised of his right to such video tape, televised proceedings which was, appellant respectfully submits, a denial of equal protection and due process per the 14th amendment to the U.S. Constitution, and begs this court to now so hold. Appellant respectfully submits in conclusion to this point that in order for the state of Florida

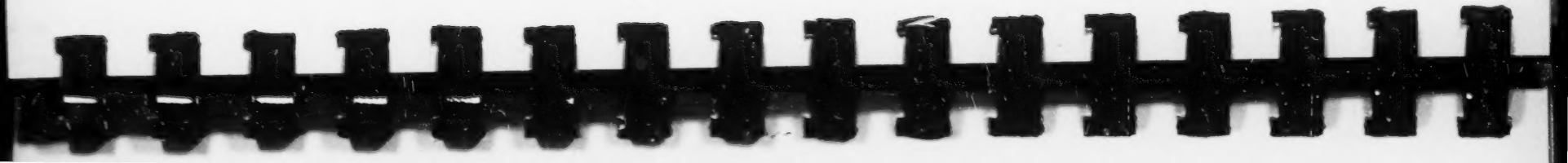
to allow equal protection and due process the state should not only be required to allow televised-video taped proceedings to all court actions when requested by counsel, but in addition should allow access to the courts to all competing television - video taping stations (transmitters), keeping in mind that certain cable networks are only received by the more affluent members of our society. This of course is but another example of grossly unconstitutional unequal protection and due process per the 14th amendment and Appellant begs this court to so hold.

Point 12: Under Title 18 chapter 44 section 925 Exceptions: Relief from disabilities "The provisions of this chapter shall not apply with respect to the transportation, shipment, receipt, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency or political subdivision thereof".

Appellant respectfully submits that at the time of his Federal arrest December 13, 1985 on the charge now appealed, he was a card carrying member of a political subdivision. As signed and sent to appellant's liberal law professors at the Florida State College of Law, as a conclusion to the letter that appears to have set up Appellants unconstitutional commitment to the Florida State Mental Hospital. Petitioner was and is, a charter member of the Republican Presidential Task Force. (Political sub of the Republican Party accepted on a national level and recognized as a state political sub in the state of Florida.)

Appellant begs this respected Court to hold that Petitioner meets the criteria for supra noted political subdivision of the recognized ruling party in our Government or to hold Title 18 chapter 44 to be void for vagueness as to what the criteria for a political subdivision is.

Point 14: The Government was guilty of perjury when in order to secure an arrest



warrant and indictment of appellant it submitted to the court and the grand jury information that weapons brought into the Outdoor Shop, Tallahassee, Florida for consignment were serial number noted as the weapons allegedly received by appellant. At appellant's pre trial detention hearing where U.S. Magistrate Everett Anderson stated in open court with news reporters present that supra noted weapons were serial number noted, news articles followed. Said serial number cataloging was later denied by manager of the Outdoor Shop under oath in court.

Petitioner submits that per supra facts pointed out in this brief he had ineffective representation both on the totality of his state of Florida unconstitutional civil and criminal charges and commitment beginning May 17, 1984 in Tallahassee, Florida and later on the present Federal conviction. On the state charges and commitment no appeal action was taken by Petitioner's counsel within the 30 day time limit required in Florida.

Petitioner's counsel during the present federal conviction was ineffective in not filing a notice of appeal within 7 days of jury returning a verdict of guilty per dismissal by the 11th Appeals Court of this appeal. Petitioner's counsel had been paid in advance for representation through trial and sentencing of Petitioner. Petitioner's counsels only excuse for not filing a notice of appeal is that he had not been "retained" for appeal, yet he was retained and paid in advance for services through sentencing which most assuredly included filing a notice of appeal within the 7 day required time. On the issue at point counsel simply was unaware that notice of appeal was required within 7 days of jury returning verdict of guilty. It will be noted from court records that peitioner did in fact file a motion for new trial in a timely way after an adjudication of guilt was handed down by the Federal Florida Northern District Court. Later proper notice of appeal was filed in a timely manner after the Tallahassee court denied

motion for new trial after holding said motion for approximently 104 days.

It is respectfully submitted that when the Chief Judge of the Florida Northern District Court, and the assisitant U.S. attorney voiced the opinion, as can be noted on supra noted page of Petitioner's sentencing transcript, that Petitioner had 10 days to file notice of appeal after adjudication of guilt, per the court and its officers advice (ruling). Petitioner should have been granted an appeal by the 11th Circuit Court of Appeals.

Prelude to Conclusion

Appellant respectfully submits the following two quotes, one by Mr. Justice Holmes, the second by Mr. Justice Brandeis in Olmstead v. United States 277 U.S. 438, 48 S ct. 564, 72L. Ed 944 (1928)

Justice Holmes," for those who agree with me, no distinction can be taken between the Government as prosecutor and the Government as judge. If the existing code does not permit district attorneys to have a hand in

such dirty business it does not permit the judge to allow such inequities to succeed.---, and I hardly think that the United States would appear to greater advantage when paying for an odious crime against State law than when inciting to the disregard of its own. I am aware of the often repeated statement that in a criminal proceeding the court will not take notice of the manner in which papers offered in evidence have been obtained. But that rudimentary mode of disposing of the question has been overthrown by Weeks v. United States, 232 u. S.383 and the cases that have followed it. I have said that we are free to choose between two principles of policy. But if we are to confine ourselves to precedent and logic the reason for excluding evidence obtained by violating the constitution seems to me logically to lead to excluding evidence obtained by the officers of the law."

Mr. Justice Brandies, dissenting, "A Proficient answer ıs found in Boyd v. United States, 116 U.S. 616, 627-630, a case that

will be remembered as long as civil liberty lives in the United States. This court there reviewed the history that lay behind the fourth & fifth amendments. We said with reference to Lord Camden's judgement in Entich v. Carrington, 19 Howell's State Trials, 1030 "The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach further than the concrete form of the case there before the court, with its advantageous circumstances; they apply to all invasions on the part of the Government and its employees of the sanctities of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of the indefensible right of personal security, personal liberty and private property, where that right has not been forfeited by his conviction of some public offense, it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's

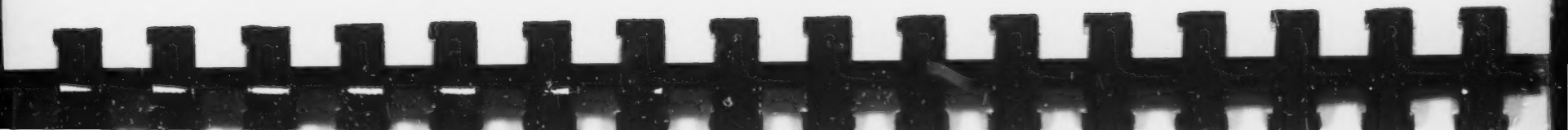
judgement. Breaking into a house and opening boxes and drawers are circumstances of aggravation, but any forcible and compulsory extortion of a man's own testimony or of his private paper to be used as evidence of a crime or to forfeit his goods, is within the condemnation of that judgement. In this regard the fourth and fifth amendment run almost into each other..The maker of our constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of men's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone--the most comprehensive of rights and the right - most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the

individual, whatever the means employed, must be deemed a violation of the fourth amendment and the use, as evidenced in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the fifth..when these unlawful acts were committed, they were crimes only of the officers individually. The Government was innocent, in legal contemplation; for no Federal official is authorized to commit a crime on its behalf. When the Government, having full knowledge, sought, through the Department of Justice, to avail itself of the fruits of these acts in order to accomplish its own ends, it assumed moral responsibility for the officers crimes.. and if this court should permit the Government, by means of its officers' crimes, to effect its purpose of punishing the defendant, there would seem to be present all the element of a ratification. If so, the Government itself would become a lawbreaker.

.....If the Government becomes a law-breaker, it breeds contempt for law; it

invites every man to become a law unto himself, it invites anarchy. To declare that in the administration of criminal law the end justifies the means -- to declare that the Government may commit crimes in order to secure the conviction of a private criminal-- would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face".

Title 18 chapter 44 sub 927 Effect on State Law reads "No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any state on the subject matter, unless there is a direct and positive conflict between such provisions and the law of the State so that the two cannot be reconciled or consistently stand together. Appellant respectfully submits that a conflict does exist when a citizen can legally receive an Ingram Mac 10 semi automatic pistol manufactured in Georgia after a commitment to a mental hospital yet cannot



buy or receive a Winchester 30-30 hunting rifle made elsewhere than within that state without being guilty of the Federal law that Appellant is now charged with.

Petitioner respectfully submits to this Supreme Court that his immoral and unconstitution State and Federal prosecution should be tied together as a collateral issue. If Petitioner's State of Florida incarceration May 17, 1984 was in violation of law, and it was, then the Wong Sun poisonous fruits of all further actions including this federal prosecution and conviction now appealed should be overturned. The "Conspiracy" to deprive petitioner of freedom which now includes (1) the right to have a defensive, hunting or target shooting weapon in his possession again for the rest of his life is denied. The estimated response time for a law enforcement officer to reach petitioner's home here at the Isle of Wight, Ga. is 24-28 minutes. Petitioner respectfully submits the large number of violent murders and burglaries in the area

makes the keeping of a defensive weapon to be the sane and sensible course of action for reasonable people to take. (2) Petitioner has been an active political worker in local and state elections and is now denied the right to vote for a candidate of his choice. (3) Petitioner has had his passport confiscated by the government and no longer can travel to areas that petitioner has an active interest in. Petitioner's education has been disrupted inasmuch as he had been assured by the head of the law school at the University in Tegucigalpa, Honduras during his brief stay there in December of 1984 that he could be accepted for enrollment there to pursue his interest in International law. (4) Petitioner is under orders from the chief judge of the Federal Northern District Court in Tallahassee, Florida to undergo counseling and therapeutic sessions at petitioner's own expense, for 5 years. (5) Petitioner's family has been severely harmed by the unlawful, unconstitutional and immoral incarceration that petitioner has undergone.

Petitioner's mother, seventy-one years old, has been hurt the worst. After the despicable attempts at entrapment calls made by the ATF to her and Petitioner's unconstitutional arrests she now questions as does all my family and most of my friends if in fact we have constitutional rights any longer. She lives daily in fear of further immoral and unconstitutional acts by the government

Petitioner begs and prays this respected court for relief from both the State and Federal Injustices he has undergone.

Petitioner can now at age forty-nine completely emphasize with statements made by past United States Supreme Court Justice Cardozo, and printed in the A.B.A. Journal a few months back where that respected justice is reputed to have stated "The only time I truly knew there was a God is when I picked up the morning paper and found that S.O.B.'s name in the obituary column (referring to a fellow Supreme Court Justice).

Petitioner has always given respect to the law and its officers yet has since May 17, 1984 been given immoral, unconstitutional and despicable contempt by those he had respected. On or about Jan. 1984 petitioner was in the Florida State Supreme Court to hear a case, with the rest of his F.S.U. College of Law Property Class, when one of his classmates walked into what was in Petitioner's eyes hallowed chambers and shouted "all rise". All of us of course immediately rose, to the ridicule and laughter of the culprit. Most of those present found the incident to be hilarious and so demonstrated by their laughs. Petitioner was shocked by such behavior.

In conclusion, petitioner begs this honorable Court to hold the Federal law unconstitutional that Petitioner is convicted of per the 10th and 14th Amendment as to equal protection and due process to the U.S. Constitution among others and to hold that appellant's constitutional rights per points noted in this brief were violated in and by

the State of Florida at his commitment to the Florida State Hospital May 17, 1984. Appellant has been wronged and begs and prays this court for a remedy.

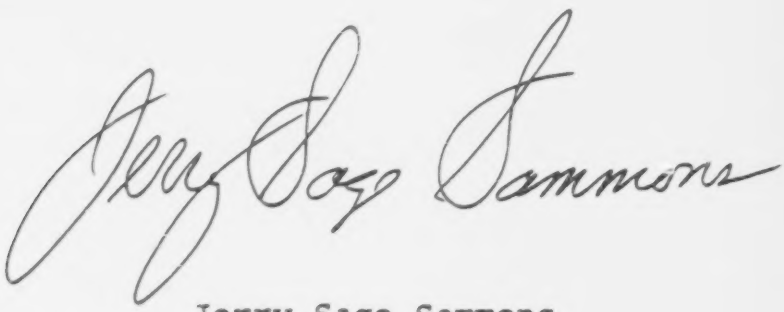
En Banc review of Petition is requested.

Respectfully Submitted
Jerry Sage Sammons Pro Se
P.O. Box 568
Midway, GA 31320
(912) 884-9124
July 18, 1986

Certificate of Service

July 18, 1986

I certify that I have sent by U.S. mail this 18th day of July, a copy of this petition for Writ for Certiorari, per directions of the clerk of the U.S. Supreme Court, to the 11th Circuit Court of Appeals, Atlanta, Ga. and to Solicitor General, Department of Justice, Washington, D.C. 30530, calling attention to U. S. Constitution violations noted in this Petition for Writ of Certiorari. Also a copy has been sent to the State of Florida Attorney General inasmuch as violations of Law by that State is addressed in this brief and are tied as a collateral issue to the federal case appealed.



Jerry Sage Sammons

APPENDIX A-1 - A-127

APPENDIX

Case Number 86-36001

UNITED STATES SUPREME COURT
October Term 1986

JERRY SAGE SAMMONS, Petitioner

VS.

UNITED STATES OF AMERICA,

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the 11th Circuit.

Jerry Sage Sammons
Post Office Box 568
Midway, Georgia 31320
912/884-9124
July 18, 1986

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3001

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JERRY SAGE SAMMONS,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

Before Roney and Hatchett, Circuit Judges and HENDERSON, Senior Circuit Judge.

B Y T H E C O U R T:

This appeal is dismissed for lack of jurisdiction.

ISSUED AS & FOR MANDATE: April 11, 1986

United States District Court for
The Northern District of Florida

Jerry Sage Sammons TCR 85-07006

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date August 23, 1985

Counsel:
With counsel James Mahorner

Plea:
Not Guilty

Finding & Judgement:
Defendant has been convicted as charged of the offense(s) of violating Title 18, United States Code, Section 922(h)(4) as charged in a one count Indictment.

Sentence or Probation Order:

Special Conditions of Probation:

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years. Execution of the said sentence of imprisonment is suspended and the defendant is placed on probation for a period of five (5) years

subject to the standing conditions of probation of this court and any special conditions that may hereafter be imposed. A Special Condition of Probation now imposed is that the defendant attend and participate in evaluation, counseling, treatment and self improvement sessions as approved and directed by the supervising United States Probation Officer at the defendant's own expense. it is further ordered that the defendant shall not possess firearms or other dangerous weapons.

It is further ordered that the defendant pay a fifty dollar ($50.00) special monetary assessment fee.

Signed by U.S. District Judge
William Stafford, Chief Judge
24 August 1985

Certified as true copy on
August 26, 1985
by S. Jacobs
Deputy Clerk

In the Circuit Court in and for Leon County, Florida
Baker Act no. 84-80-BA
In re Jerry Sage Sammons

June 4, 1984
Paul L. Hartsfield
Clerk of Circuit Court

Order For Involuntary Placement

Victor M. Cawthon
Judge

Report of Release June 25, 1984
Florida State Hospital
Chattahoochee, Florida 32324

Diagnosis - Terminology and Code

None

Discharging physician: Dr. Valenzuela

Court Case No. BA-745
Commitment Date 6-4-84
County Leon Circuit Court

Notice of Discharge

You are hereby notified that Jerry Sage Sammons A 105 492 committed for involuntary placement has the 1st day of October 1984 been discharged from this facility.

October 1, 1984

Robert B. Williams
Administrator

The following Depositions are not
the original pages but a
re-typed duplicate.

In the United States District Court for
the Northern District of Florida
Tallahassee Division
Tallahassee Criminal
85-07006-WA

United States of America
Plaintiff

v

Jerry Sage Sammons
Defendant

2nd Day of Trial

Point (1) vol. 2-61 to 2-69

Mr. J. Mahorner attorney of petitioner is here cross examining government witness Sgt. Taylor of the F.S.U. police department.

Q Now, did you testify before the Grand Jury?

A Yes, sir, I did.

Q Was the prosecutor in the Grand Jury room when you testified?

MR. NABATOFF: Objection, Your Honor.

THE COURT: Well, what's the objection?

MR. NABATOFF: I'm not sure what this has to do with anything. It's irrelevant.

THE COURT: Well, it is relevant, and he's allowed in there when the witness is testifying.

Answer the question. We will see if it's irrelevant or not.

A I believe he was; yes, sir.

BY MR. MAHORNER:

Q Mr. Nabatoff was in there, was he not?

A I believe so; yes, sir.

Q Was there any discussion about the possibility of charging you as an accessory for delivering the guns in an action that you knew or intended them to end up with a mental patient?

A No, sir.

MR. NABATOFF: Objection, Your Honor.

THE COURT: The question is asked and answered. The answer is no, but the question is totally irrelevant, Mr. -- but it's asked and answered, so it will stand.

Please move on to something else.

BY MR. MAHORNER:

Q Were there any other attorneys in the jury room?

MR. MAHORNER: If I may ask, Your Honor, that's the last question I have on that.

THE COURT: All right.

A I don't believe so. I don't know. I don't know, but there were a lot of people there. I don't know what all their occupations were.

Q Did you call the federal authorities regarding the Defendant Sammons?

A Yes, sir.

Q And approximately what date was that?

A I'm not sure of the date. It was the end of November, somewhere between, I think, the 27th and the 30, or so, of the month, but i"m not sure exactly what day it was.

Q Now , at the time that you delivered the gun to his attorney, did you have knowledge that that was a violation of the law?

A No, sir.

Q Now, at the time that you called them, did you have knowledge that was a violation of the law?

A No, sir.

Q Well, why did you call them?

A I had received information that Mr. Sammons may be leaving the country, that he may be attempting to take the firearms with him,

and that I contacted the U.S. Customs to find out what the procedures were for taking a firearm out of the United States, and referred to the ATF office in Jacksonville, and the was--I contacted the ATF office, Alcohol, Tobacco and Firearms, to find out if Mr. Sammons had applied for permission to take firearms out of the United States.

Q Okay. How did you get notice that he was taking the firearms out of the country?

A I'm sorry?

Q How did you get notice that he was taking the firearms out of the country?

A I had received information from Mr. Joe White that he was planning on leaving the United States and that he was planning on taking the firearms with him.

Q Mr. White knew he was planning on taking the firearms with him?

A He had received information that he was doing that, and I was trying to contact the ATF people to find out if he had indeed done so.

Q So Mr. White was the one that first called you about that concept in November?

A Yes, sir.

Q That was our first November question or the last of November question regarding this transaction, the transportation of the guns?

A Out of the United States, yes, sir, the question that we had for ATF.

Q Now, did you go to the house and--or to his home after November?

A Yes, sir.

Q And were the guns there?

A Yes, sir.

Q So evidently he was not transferring them?

A Two of the three guns were there, the two hand guns that we have seen here in court today. The .30-30 rifle was not located.

Q That is a hunting weapon?

A Yes, sir.

Q You don't know if hunting weapons are given special status, do you?

A I'm sorry, O don't understand you question.

Q When you went to the Defendant's home, was it in December?

A Yes, sir, December 12th.

Q Did you know that he and already left the country?

A No, sir, I did not.

Q Did you leave anything there when you went in and took the weapons?

A I was accompanying the Alcohol, Tobacco and Firearms people in their search, and they did leave a copy of the search warrant at Mr. Sammons' residence.

Q They left a copy of the search warrant?

A Yes, and a receipt for all the property that they had encountered pursuant to that warrant.

Q When you went in your first time without the U.S. authorities, did you leave a copy of any search warrant when you went in in May?

A In May?

Q When you first went in.

A Are you talking about May of '84?

Q Yes, sir.

A At that time there was no search warrant, and the federal authorities had no connection with this particular case.

Q How many officers were with you in May when you went to his home?

A There were three at the front door and two at the back door, at the rear of the apartment.

Q Is that in addition to yourself?

A No, sir, that is including myself.

Q And did you have weapons with you?

A Yes, sir.

Q Were they holstered?

A Yes, sir.

Q All of them were holstered?

A Yes, sir, to my knowledge there were three--I was at the front door with two officers. I cannot--I don't believe that the officers in the rear of the apartment had drawn their weapons, but I did not see them; that would be a physical impossibility.

Q Okay. The conversation with Mr. Sammons involved an attorney, and you said to him

that he could call one from your station or the police station?

A Mr. Sammons, at the time that he was taken into custody, was not arrested, he was taken into custody pursuant to Judge Miner's order, and--.

Q But did he mention to you an attorney?

A He said that he would like to have an attorney, and I told him as soon as we got through with the evaluation that Judge Miner had ordered and transferred him to that facility where that evaluation could take place, then he would be put in custody and could contact an attorney whenever it was feasibly possible.

Q Was Mr. Sammons a student at the law school at FSW?

A At that time; yes, sir.

Q And he asked you about an attorney when you first came in, and you told him that as soon as you--you explained to him about the Baker Act concept?

A (Nodded affirmatively)

Q Now, after that conversation did you ask Mr. Sammons if you could get the gun, or about the guns?

A I asked him about the .357 magnum, had information at that time that he possessed one, and I asked him where it was. And he said it was in his car. And I asked him could we get it out of the car. And he said yes. And the officer was sent out to the vehicle and brought in the .357 magnum, the Colt. And Mr. Sammons asked us if we would keep custody of the gun because he was afraid that it would be stolen while he was sway from his apartment. I told his that it would have to be freely and voluntarily that we took it into custody because he was not under arrest and that we had no authority to take the weapon. And he became insistent that we impound the weapon and keep it for protection. And he advised us that there were two other firearms within the the residence, told us where they were. And I sent officers up or went up and retrieved one--both of the

weapons came out of his bedroom. I think one was by the bed and the other one was in a closet.

Q And this was after you had explained to him about an attorney and the Baker Act, and the he would be able to talk to one when you got downtown?

A I'm not sure that that's a question, sir.

Q Okay. Now, you didn't have five men there for Mr. Sammons to do down voluntarily, did you? You were placing him under restraint, weren't you?

A I was taking him in custody pursuant to the court order.

Q There was no court order that used your name, was it? The court order didn't use your name?

A The court order did not--I don't understand.

Q Didn't refer to you?

A I was instructed by Judge Miner personally.

Q I'm talking about the court order.

A Whether it had my name on it?

THE COURT: Are you talking about the written order?

MR. MAHORNER: Yes, sir, on the written order.

THE WITNESS: I do not know whether my name was written on the order, but I was under Judge Miner's instructions to take the court order and take Mr. Sammons into custody and report back to Judge Miner as soon as that was done.

2nd day of trial continued

vol. 2-71 to 75

Point 2 - Cross examination of government witness Mr. Joe White, Assistant State Attorney, Florida by petitioner's attorney Mr. J. Mahorner

CROSS-EXAMINATION

BY MR. NABATOFF:

Q did you every have the guns in your possession?

A No, sir.

Q They were always where, to your best knowledge?

A To my knowledge, they were in the possession of the FSU Police Department.

Q And at no time did you have them for evidence or anything like that?

A Not in my physical possession; no, sir.

Q Or in the possession of your office?

A No, sir.

Q Now, did Sergeant Taylor tell you that the Defendant had come to him to get the firearms?

A Yes, sir.

Q And you advised Sergeant Taylor to turn them over to his attorney so he could have them that way.

A I advised Sergeant Taylor that in my opinion there was no state ground for the Department to continue to hold the guns and they should be turned over to Mr. Jacobs.

Q Now, did you know that as to the Defendant, these guns were prohibited by Federal law at the time this happened?

A No, sir.

Q So it wasn't your intent to entrap him by this process or anything?

A No, sir. It was our intention simply to return them to his attorney for disposition as he saw fit.

Q But it was your expectation that he would be giving them to the Defendant?

A That was my understanding from Mr. Jacobs.

Q Mr. Jacobs told you he would be giving them to the Defendant?

A Yes, sir.

Q Now, did you testify before the Grand Jury?

A No, sir

Q You never testified before the Grand Jury at all?

A No, Sir.

Q Did you receive any information that you related to Mr. Jacobs concerning the Grand Jury was considering charging you and Mr. Jacobs as an accessory?

A No, sir.

Q You never relayed anything like that?

A No, sir. I was unaware of that.

Q I'm not stating that to be true. I thought that that had happened. I was just asking you if it happened.

Q No, sir.

Q Who--you explained to Mr. Taylor to tell you about this. Was it by phone, or did he tell you about--?

THE COURT: Tell you about what?

MR. MAHORNER: The gun.

BY MR. MAHORNER:

Q The Defendant was demanding the guns when Mr. Taylor--Sergeant Taylor conveyed to you that the Defendant was asking for the guns. How did he do that?

A I believe by telephone.

Q Do you know approximately--was that the same day the guns were delivered?

A As I recall, I had several conversations with Sergeant Taylor regarding requests from Mr. Sammons to have the guns returned. That occurred certainly prior to the day that they were returned.

Q Okay. Did you have any conversations with the Defendant's attorney, Mr. Jacobs?

A Yes, sir.

Q And were there several or just one?

A Several.

Q Okay. Now, I may have misunderstood you, but did you say that you returned them the same day, or do you think there were intervening days between the first conversation regarding the returning of the guns and the return of the guns?

A There were several intervening days.

Q And intervening days between your fist conversation with Mr. Jacobs?

A Yes, sir.

Q Now, were the guns delivered to your office for return to Mr. Jacobs?

A No, sir. The arrangement that we had with Mr. Jacobs, as well as Sergeant Taylor, was that at an appointed time Sergeant Taylor and myself would meet at Mr. Jacobs' office, and we did not meet at my office prior to that time, we went directly and met there.

Q Okay. In other words, you arrived not together but independently?

A Yes, sir.

Q And the guns were with Sergeant Taylor when you arrived?

A Yes, sir.

Q And then you went in Mr. Jacobs' office?

A That's correct.

Q And gave the guns to Mr. Jacobs?

A Yes, sir.

Q Now, at that time Mr. Jacobs indicated again that he was going to return the guns to the Defendant?

A That was my understanding.

Q Did Mr. Jacobs in anyway indicate to you that he knew that this would place the Defendant in a federal violation?

A He made no such statement to me.

2nd Day of Petitioner's Federal Trial

(continued)

Point (1) vol. 2-76 to 2-102

Testimony of government witness Mr. Joe Jacobs, Tallahassee, former attorney of Petitioner's during State of Florida Actions

and at pre-trial hearing for this federal case:

MR. NABATOFF: I have no further questions of this witness, Your Honor.

THE COURT: May Mr. White be excused, counsel?

MR. MAHORNER: Your Honor, we have Mr. White under subpoena.

THE COURT: So you want him to remain?

MR. MAHORNER: If he would be in his office at one, I--I don't feel our case would be until after lunch.

THE COURT: It won't be, I can tell you it won't be.

MR. MAHORNER: Okay. If he would be in his office at 1:30 so we can call him.

THE COURT: All right. You are excused subject to recall and being available for a phone call.

MR. MAHORNER: And if he would favor me with his number.

THE WITNESS: 488-8323.

THE COURT: All right. Subject to that, you may be released.

MR. NABATOFF: Call Joe Jacobs.

MR. MAHORNER: Your Honor.

THE COURT: Yes, sir.

MR. MAHORNER: We have a matter that needs to be taken up outside the present of the jury.

THE COURT: All right. Come up to side bar.

THE COURT: Uh-huh.

MR. MAHORNER: We have several things, Your Honor. If I may?

First, I am having to do--you know, come up here unusually, a lot, and I apologize for those. I would like the jury told that it's not a matter of my trying to improperly conceal something, but it's something that's customary, or that it would be improper for me to do it in front of them, which is the case.

The second thing is that we object to this man's testimony, because he was counsel for the Defendant, and we think this

constitutes a privileged situation, and that he should not be allowed.

The third thing we think we are absolutely entitled to, and that is it goes back to a situation that I can give the Court a parallel. In the case before the court previously, in the Hosford case there was a witness for the Defendant who was going to testify about a movie, which was a Paul Newman movie about the government and the sting effect, and that witness was potentially incriminating himself when he testified. And the court gave approximately two pages of instructions to that witness who was there sought by the government regarding--I mean, there sought by the Defendant in the Hosford case regarding--that that witness didn't have to testify, that he was potentially putting himself in self-incrimination, and that he was thoroughly warned that he was subject to charges, and he was advised of his right to take the Fifth, and that if he did testify, everything--.

BACK IN OPEN COURT

THE COURT: Why don't we take the jury out for a minute or so, please? Ladies and gentlemen.

Mr. Jacobs, why don't you step down for a moment, please sir?

Thank you.

(Whereupon, witness removed from the courtroom)

THE COURT: All right. The jury is out. The witness is out. Go ahead.

MR. MAHORNER: Your Honor, the manner of the indictment, the Defendant or his attorney can go before the Grand Jury to get an indictment of this witness.

THE COURT: Sir?

MR. MAHORNER: The Defendant or his attorney has the prerogative to go before the Grand Jury and get an indictment of this witness potentially, so it's not a--.

THE COURT: Of course--wait a second. It's not an indictment until the United States Attorney signs it.

MR. MAHORNER: I know that's the usual case, Your Honor.

THE COURT: It's not the usual case, it's the law.

MR. MAHORNER: In any event, there is no evidence the man has been given immunity. He is subject to prosecution. He absolutely, under the facts, was almost equally guilty and clearly a principle in the act, in that he was knowingly doing everything the Defendant had been ruled upon to be guilty of by this Court. The rulings have been that if the Defendant knew it had been entered--knew that the--that he had been--had committed a crime, and that he was receiving the guns, those are all required. he doesn't have to know about the interstate or anything like that. Those are the rulings.

Mr. Jacobs is in the exact same position as this Defendant. We was equally indictable. We, frankly, as we motioned to the Court that if we had had the record of just the prosecutor's statements before the

Grand Jury, it would have shown that the jury was directed again and Mr. Jacobs was a necessary element toward the Defendant. But Mr. Jacobs was definitely involved, and he had --.

THE COURT: what is it you want me to do?

MR. NABATOFF: I want you to instruct him at length that he is subject to prosecution if he delivered these guns knowingly, knowing that the Defendant had been committed to a mental hospital, and that he does not have to testify because he has a Fifth Amendment privilege.

Two, we have an element that his communications with the Defendant were within representation. In other words, these people have said that they were giving him the guns for the purpose of his acting as the Defendant's attorney, to give the guns to the Defendant. And now the Defendant--he is being called in here as a Defendant's attorney, or was at the time, and to testify against the Defendant regarding the

transactions between them which was arranged by the state government because of the attorney-client relationship. And for that reason, Your Honor, we think that the privilege, the attorney-client privilege bars the testimony. So its two-fold.

MR. MAHORNER: I will respond to the attorney-client privilege very briefly. United States versus White, 671 F 2d 1131, Fifth Circuit case:

"The attorney-client privilege prohibits the disclosure of the substance of communications made in confidence by a client to his attorney for the purpose of obtaining legal advice."

That's page 1135. mr. Jacobs is not testifying to the substance of any communications.

United States versus Freeman, 619 F 2d 1112, that's a Fifth Circuit 1980 case where appellants argued that the admission of certain testimony of Cliff Miller, former president of the company, violated the attorney-client privilege because he

testified that the lawyer instructed him to move some boxes. The Fifth Circuit stated that in his testimony before the jury, Miller revealed no confidential communication--.

THE COURT: What's the name of that case?

MR. NABATOFF: United States versus Freeman, F-R-E-E-M-A-N, 619 F 2d.

THE COURT: Yeah. I got the cite.

MR. NABATOFF: In this case what we have here is a disclosure of an act, not substance of any communication. Moreover, if you construe it as a communication, it wasn't made in confidence by a client to his attorney for the purpose of obtaining legal advice.

Now, the part about immunity I don't quite understand, because I guess we could have indicted Sergeant Taylor, too.

THE COURT: Well, I think this--if I see it, he is contending that if Sammons can be persecuted for possessing the gun, anybody who aids and abets in that--in that possession under 18 USC 2 is likewise a

candidate for prosecution, as long as the statute of limitations hasn't run.

MR. NABATOFF: We have no problem with you instructing him about his rights. He is an attorney, so I'm sure it won't take as long as the last time that we did it. If that poses a problem, then I will give him immunity for whatever he says.

MR. MAHORNER: And the Defendant is entitled to the fact that that's basically the arrangements that are going on and to let the jury know, I mean, because of credibility, if that's the situation.

THE COURT: If what's the situation?

MR. MAHORNER: We think those arrangements have been intentionally made privately; in other words, Mr. Jacobs tacitly knows that he's got an agreement from the prosecutor that he's not going to be prosecuted for coming in here, especially in light of the fact that the Judge enlightened me, which often the court enlightens me, which he often does, in fact there is no way

to get an indictment without the prosecutions' okay on it.

THE COURT: Yeah. It's Hauberg against Cox, or Cox against Hauberg, Fifth Circuit, about 19--late 50's or early 60's, H-A-U-B-E-R-G, came out of Mississippi.

MR. MAHORNER: Chapter 1 of the Bureau of Alcohol, Tobacco and Firearms, Section 178. 32(c):

"Any individual who to his knowledge and while being employed by any person coming within a classification contained in Paragraph (b) of this section may not in the course of such employment receive, possess or transport a firearm in commerce or affecting commerce."

But I just wanted to show those to the Court.

THE COURT: Show me what?

MR. MAHORNER: Under Title 27, the basis is that basically Mr. Jacobs is also a Defendant.

THE COURT: Mr. Mahorner--.

MR. MAHORNER: I'm not walking away from Your Honor deliberately.

(Pause)

(Discussion off the record)

THE COURT: Okay. so you want me to advise Mr. Jacobs that --.

MR. MAHORNER: His testimony can potentially involve criminal prosecution, and it involves potential prosecution, and he does not have to testify because of it.

THE COURT: Okay. I don't see any problem with the attorney-client. Let me get that off the deck here right away. I don;t see any problem with that, because he's not testifying as to any communication he has had with Mr. Sammons and his attorney-client relationship. He is merely, as I expect the testimony to be, saying he got the guns from Mr. White and Sergeant Taylor, and at some later date he handed them over to Mr. Sammons. That's--is that it?

MR. NABATOFF: That's it, Judge. Three questions.

THE COURT: there will be no questions as to what Mr. Sammons said to him or anything like that?

MR. NABATOFF: None at all, Judge. All I'm going to ask him is--.

THE COURT: You can't ask him--if you get into it, then you may be waiving that relationship. But as long as the government goes no further than that, then I don't see any attorney-client privilege that will attach to his receipt and transfer of these guns.

MR. MAHORNER: Yes, sir. I appreciate the ruling, have no argument with that. I mean, I'm not accepting it for purposes of the appeal, if any, but what I'm saying, Your Honor, respectfully, is no argument. I just want to bring out that the situation may well require me to be put in a position of waiving it in order to further develop the person's rights. But I don't think that's anything new or not an argument to change Your Honor's ruling.

THE COURT: Okay. Bring Mr. Jacobs in first, then, please.

(Discussion oft the record)

THE COURT: Swear Mr. Jacobs.

Whereupon,

JOSEPH C. JACOBS

was called as a witness for the government, having been first duly sworn to speak the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated, and state your full name for the record.

THE WITNESS: Joseph C. Jacobs, J-A-C-O-B-S.

THE COURT: Mr. Jacobs, I know you to be a member of the Florida Bar and an attorney practicing in the Tallahassee area for many years. I have been--at the suggestion of counsel, I have--am going to advise you, in an abundance of caution, that your former client, Mr. Sammons, is here charged with a violation of a federal statute which makes it a crime for a person who has

been committed to an institution, regardless of what the disposition of that person's mental status is later determined to be, regardless of that, if--if they have-- if that person has been in a mental institution and then later possesses a firearm, the federal statute makes it a--makes that a federal violation. Okay?

THE WITNESS: Yes, sir.

THE COURT: All right. We have already had testimony that Sergeant Taylor and Mr. Joseph White, who is also a lawyer, took three guns that had belonged to Mr. Sammons and gave them to you, and it was your statement at the time that these--you were going to turn these guns over to Mr. Sammons, and circumstantially the guns later were in Mr. Sammons' possession at some later date, which suggests that indeed he obtained possession of them from you.

Now, there is a provision of the united States Code, Section 2 of title 18, dealing With aiding and abetting and counseling and procuring, and I am sure I am

not going to have to go into a lecture on this, but I feel that I should, in an abundance of caution, advise you that if your testimony would be such that this would involve you, out of words from your own mouth, would put you in a position where you might be subjecting yourself to criminal prosecution, either as a principle or as an aider and abettor to this violation, then under the constitution of the United States, you have a right to refuse, to not testify. And if you do, you should understand that any testimony you give could be used against you in a prosecution.

You have a right to consult with an attorney, and if you don't have funds to do that, the court would appoint competent counsel to represent you; that you may, of course, stop the questioning at any time. And I just, as I say, want to advise you of that. It came at the suggestion of counsel, and I feel, of course, constrained to so advise you.

So, what I am saying, you can testify or not testify. That is your call. And I am certainly--I know you have been practicing law a lot longer than I have, and I know we have litigated against each other when I was not on this side of the bar, so I know you have more than a walking around acquaintance with the criminal law, and certainly constitutional issues. So I, nevertheless, feel obliged, as the judicial officer assigned to this case, to advise ;you on the record of your rights.

THE WITNESS: May I just have a moment, Your Honor?

THE COURT: Sure.

THE WITNESS: Thank you.

(Pause)

(Discussion off the record)

MR. MAHORNER: Let the record show that the witness is conferring with the U.S. Attorney.

THE COURT: All right.

MR. NABATOFF: Judge, let the record reflect that we have granted Mr. Jacobs immunity.

THE COURT: All right. The record will so reflect. Now, do you want to testify?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay.

THE WITNESS: No, I don't want to testify, Your Honor. I am subpoenaed here. If I could get out of being here, I would be delighted to.

(Laughter)

THE WITNESS: I wish the Court to know that I have a continuing objection as to any lawyer-client relationship.

THE COURT: All right.

THE WITNESS: Because of the fact that he has never--no one has ever asked me to get a waiver of that, and none has been received, that I know of, so I don't--if you will--.

THE COURT: I understand. What do you want me to do?

THE WITNESS: I want you to be aware--I don't want to interrupt. I am a witness, but I do want the fact that I have an objection to testifying about anything that would fall under the lawyer-client privilege, because I--all of my dealings with him was as his lawyer, and all of my dealings with the other individuals was as his lawyer. And I have had no relationship outside the lawyer-client privilege.

THE COURT: Let me ask you, Mr. Nabatoff, why do you need Mr. Jacobs here?

MR. NABATOFF: He fills the last piece of the puzzle where the weapons go to, one to two to three. They gave it to him, he gave it to Mr. Sammons. Now, I have researched the law and the act--as a matter of fact, I think his testimony will show that he in fact did not give the weapons to Mr. Sammons but that Mr. Sammons came into the office and took them.

THE COURT: Well, if I know the way that operates--that law firm operates, nobody in there walks in and takes away anything

without Mr. Jacobs having given instructions to a secretary or somebody in that office. I mean, you are not suggesting--?

THE WITNESS: You Honor--.

MR. NABATOFF: No.

THE WITNESS: Let me give the two minute scenario of exactly what took place so that you will know, Your Honor.

THE COURT: Okay. Sure.

THE WITNESS: What occurred was, Mr. White--I called Mr. White, Mr. White told me that Mr. Sammons could only receive his guns back when the charges against him then existing were dismissed. He came to my office and said, I am going to get them--the charges dismissed, and I will call you. The officer brought the guns, put them on the couch in my office. I signed a receipt for them as Mr. Sammons' attorney. I'm sure that is somewhere in the record. And Mr. White called me and said, I have now dismissed the charges against Mr. Sammons, and you are free to give him the guns. I then--I either called Mr. Sammons or Mr. Sammons came in,

and I told him, your guns are in there on the couch in my office. I didn't see him physically take them out, but they later, when I went back in that office, were not there anymore. And I am sure that that was because Mr. Sammons went in and picked them up.

THE COURT: Did anybody every tell you that this man could be subject to federal prosecution?

THE WITNESS: No, sir. I was never more shocked by anything in my life that that was true. In fact, Mr. White, the Assistant State Attorney was equally shocked, I believe, or appeared to me to be. I didn't know such a statute existed. I would never have allowed him to take those guns had I known that statute existed, Judge.

THE COURT: Okay. Anybody have any questions of Mr. Jacobs now while the jury is out?

MR. MAHORNER: (Nodded negatively) We think it's unnecessary to relate that charges were dropped.

THE COURT: What charges are we talking about?

THE WITNESS: I don't remember, Judge.

THE COURT: Do you mean some state charges?

THE WITNESS: Yes, state charges. there was a misdemeanor--what were the charges?

THE COURT: As far as you knew, whatever--.

THE WITNESS: Whatever the impediment to him getting his guns back was the charges, and Mr. White called me on the phone and said--he left my office to go and get the charges dismissed, but I--but Mr. Sammons couldn't pick up his guns until the charges had been dismissed. He called me up and he said, the charges have now been dismissed.

Well, later on that afternoon Mr. Sammons came by, and what occurred is as I have previously testified.

THE COURT: Were you his lawyer in connection with these state charges?

THE WITNESS: Yes, sir. I'm not sure that I was his lawyer in connection with the state charges. I was his lawyer representing him trying to get him out of Chattahoochee, as matter of fact, and then he said he wanted his guns back, and I asked them what impediment was there to giving him his guns back, and they said the charges were pending against him and they couldn't give them back until the charges had been dismissed. When they were dismissed, the guns were given--were left on my couch for delivery to him. He came by, and I am sure--I have to presume, but I'm sure he picked them up, and I know they must have all been there because he never objected to me to them being there, but if there were one, two or three guns, I believe I remember more than one, but I do not remember whether they were--.

THE COURT: Let me ask you this: Was it your understanding that whatever

charges that the state had which precipitated the seizure of these guns in the first place--

THE WITNESS: Had been dismissed?

THE COURT: -- had been dismissed?

THE WITNESS: Yes, Your Honor. yes.

THE COURT: And, therefore, the--.

THE WITNESS: Had no further value.

THE COURT: And they were to be returned to the proper owner, who was Mr. Sammons?

THE WITNESS: Yes. And I also understood they were very expensive weapons, over a thousand dollars. Somebody mentioned the worth of the property, and the officer was rightly concerned about being responsible for that large, valuable property.

THE COURT: Uh-huh.

THE WITNESS: Which he wanted to get rid of.

THE COURT; Anybody have any further questions of Mr. Jacobs?

MR. MAHORNER: I do.

THE COURT: Mr. Mahorner.

VOIR DIRE EXAMINATION

BY MR. MAHORNER:

Q I think--just under the circumstances, I want to refresh your memory, possibly, but that there was a small amount, maybe was 500 to negotiate the charges being dropped, and there was some kind of concept that maybe Mr. Sammons would continue a voluntary treatment program, Mr. Sammons back at that--later--do you have any recollection of that?

A Yes, I recall we negotiated what I thought was a good settlement, but was not a good settlement, from Mr. Sammons' standpoint, and we--.

Q The point was, you were representing him on these charges?

A Oh, yes, I was representing him.

Q So the Court shouldn't have any misunderstanding of that, you were representing him on these charges, as well?

A I'm sure that's true, Mr. Mahorner, but the situation, whatever charges existed against

him were dismissed, whatever they were, they were all dismissed, because if there had been a charge pending against him, that would--would have precluded them from being able to give him his guns back.

THE COURT: Was there any federal presence in the case that you were aware of at any point?

THE WITNESS: None whatsoever, Your Honor. The federal government was not involved in any way, as far as I know, in any way at all.

THE COURT: And the authority which had seized the firearms, that is either the FSU Police or the State Attorney--

THE WITNESS: Both.

THE COURT: -- some state law enforcement or prosecutorial authority which had seized the guns was now returning them to you for redelivery to your client?

THE WITNESS: Yes.

THE COURT: Indicating to you that there were no charges, all charges had been

dropped, and they were being returned as having no further value to the state?

THE WITNESS: That's correct, Your Honor.

THE COURT: Okay. Anybody else have any questions?

MR. NABATOFF: I have no questions.

THE COURT: Why don't you step down for a minute, Mr. Jacobs, again?

(Whereupon, the witness was removed from the courtroom)

(Discussion off the record)

THE COURT: Mr. Nabatoff, let me ask you a question.

MR. NABATOFF: Yes, sir.

THE COURT: What in the world is this prosecution all about?

MR. NABATOFF: Judge, very simple. I have avoided going into the reasons behind the prosecution because they do not pertain to the elements of the offense, but there are reasons for this prosecution, but they do not pertain to the elements of the offense. And since I made a motion in limine to exclude

earlier evidence, I was not going into it. I could put witnesses on the stand, and then you would have a fuller comprehension of this prosecution. but this is the same prosecution as various other--as is seen in United States versus Bruscantini, they are strict liability offenses, and the facts are certainly--I mean, it's--it's a strict liability statute. In all these cases there are situations just like this.

For instance, in United States versus Jiles, he purchased the guns for self protection. That doesn't matter.

United States versus Ware, April 18th, Eleventh Circuit case, same thing, intent isn't an element.

There is a case out of the Eastern District of Michigan, a convicted felon, where the Lieutenant Governor, or even the head of Michigan pardoned the Defendant, said you can have your firearms back. he was convicted in the Eastern District of Michigan.

The case law is clear in this area, there is a strict liability offense, and it really doesn't matter what the state does. That's all the cases say, because federal law is not dependent on state law. I mean, in--I think facts which are worse than in this case, United States versus--.

THE COURT: Those are your words.

MR. NABATOFF: Well, I'm trying to explain. You know, you asked why there was a prosecution, and I'm trying to explain, according to the case law which supports prosecution.

United States versus Bruscantini, he pleaded nolo contendre to the state burglary charge, and the state judge withheld adjudication. The state judge, as well as the stare prosecutor, told him that he was not a convicted felon. too bad, he was convicted of being a convicted felon and receiving firearms.

State action is irrelevant to a federal statute, specifically this statute of receiving firearms. the case law is clear.

MR. MAHORNER: Your Honor, perhaps in all, or in many of these cases, the man signed something that told him if he had been convicted of a felony, and he was on notice, but that's not the circumstances here. And those are the things that we use to distinguish the things that he had to sign when he purchased the guns, that he had--as to whether he had been convicted of a felony or not.

THE COURT: All right.

MR. MAHORNER: And that did not happen here, and it's a very much harder case.

MR. NABATOFF: I have sat here, and that's a frivilous argument. The Fifth Circuit, for the past 20 years says that notice--knowledge that he is breaking the law is irrelevant, since knowledge is not--.

THE COURT: Let's go. Is this your last witness?

MR. NABATOFF: No, I have two more after that, but we can get him in and out.

THE COURT: Let's get Mr. Jacobs on the stand and get Mr.--.

MR. MAHORNER: Your Honor, I would like to say that there are many-- we have gone into the extemporaneous objection by the prosecutor. We think we could have shown the man's political views are, of course, the reson for the prosecution.

THE COURT: All right. Bring the jury in. Let's go

(Pause)

(Whereupon, the jury was returned to the courtroom)

THE COURT: Please be seated.

(Whereupon, Joseph C. Jacobs was resworn in the presence of the jury)

THE CLERK: Please be seated. State your full name for the record.

THE WITNESS: Joseph C. Jacobs, J-A-C-O-B-S.

DIRECT EXAMINATION

BY MR. NABATOFF:

Q Where are you employed, sir?

A I'm a partner in the firm of Ervin, Varn, Jacobs, Odom 7 Kitchen at 305 South Gadsden Street in Tallahassee.

Q On or about October 22nd, 1984 did you receive any firearms belonging to a Jerry Sage Sammons from a Sergeant Bill Taylor?

A Yes, sir.

Q Can you tell the jury what happened to those firearms?

A Sergeant Taylor left some firearms on the couch in my office for delivery to Mr. Sammons. i signed the receipt as his--as his attorney for those weapons. I do not remember--I think there were more than one, and I do not think there would be more than three. They were in vinyl or leather cases, so I'm not sure. But whatever he left there, I signed for it. Later on Mr. Sammons came into the office, I asked him--I told him that they had left the weapons in the office for him, and later on they were not there, so I assumed that he took them. I didn't see him take them.

MR. NABATOFF: Thank you. I have no further questions.

CROSS-EXAMINATION

BY MR. MAHORNER:

Q It's my duty, Mr. Jacobs, as attorney for the Defendant--.

JUROR DOLSON: (Indicating)

THE COURT: Speak up. They can't hear you.

BY MR. MAHORNER:

Q It's my duty as attorney for the Defendant to ask you some questions. How long have you been in the practice of law?

A Thirty-five years.

Q How long have you been related to the practice of criminal law, as far as involvement?

A Most of that time, as a small part of my regular practice.

Q Yes, sir. But as a small, but continuous part?

A Yes.

Q Okay. Were you given immunity in this case to testify?

A Yes.

Q Did you know that when you received his guns and gave them to the Defendant that that involved a federal offense?

A Certainly not.

Q You did not know there was anything in the federal criminal law about that?

A Certainly not, nor did the state attorney, the state prosecuting officer, Mr. White, who has told me it was all right to receive them for Mr. Sammons, nor the officer, whose name I do not remember, but the officer who physically delivered the guns to my office.

Q Okay. did you receive a call from Mr. White or anyone else regarding the concept of the Grand Jury considering indicting perhaps you and Mr. White, or anything like that? Did you relate that type of information to me, or do you remember anything in that regard?

A I really don't remember anything like that.

Q In other words--.

A I was granted immunity just a few minutes ago.

Q Right. Previously when this case came up, back in December or somewhere like that, there was no concept, or somebody called you and told you they were considering bringing this indictment?

A That hits a familiar chord. It seems that, now that you mention it, somebody did mention the possibility of charging me and/or the state attorney for a charge of either aiding or abetting, or something like that. May have been -- that sounds kind of like that might have been something that somebody mentioned, but I don't remember it.

Q Do you have any recollection of relaying that to me in your office later, like in the last few months?

A I may have, but I do not recollect it specifically, Mr. Mahorner.

Q When you -- when you saw the Defendant on the day the guns were in your office, do you know approximately what date that was?

A No sir, I don't.

Q What were the circumstances upon your seeing him? Did he come into your reception room, or did he come into your office?

A My memory is that I was going out of the building as he was coming in. I was either going out of the office to another office in the building or to the courthouse or to another building as he came in, and I said, your guns are in the -- on the couch in my office. That's my recollection.

Q Okay.

A And then when I came back from wherever I went to, we may have chatted for a minute. My memory is we may have chatted for a minute.

Q Before you left?

A With Mr. Sammons, yes. Yes.

Q Before you left the office?

A Yes. And then -- and then the next time I was in the office there was nothing on the couch, so I assumed that he got them.

Q And that could have been several hours later?

A It could have been several hours later, yes. My memory is that that was late in the afternoon, though. I'm not sure, but that's a recollection I have, that it was late in the afternoon.

Q But you think that you were potentially going to court?

A Might have been. Might have been, or it might have been I was going somewhere else.

Q Did Mr. White specify that it was fine for you to give the guns to -- the prosecutor, I'm talking about, the state prosecutor, to give the guns to him, that everything was clear?

A The conversation that I had had with him previously was that they could not return the weapons because there was a pending charge against Mr. Sammons.

Q Is that -- was that a misdemeanor charge?

A Then he -- it was a charge, from my memory, that was a misdemeanor. And then he was in my office when I said that I -- I, Mr.

White, am going to dismiss those charges, and then it's all right to give the weapons back to Mr. Sammons. He went and called me on the phone and said, I have now nol prossed or dismissed the charges, and you can return the weapons to him, or words to that effect. This was the only impediment that I was aware of to him receiving his guns back.

MR. MAHORNER: I have no further questions.

THE COURT: All right. Any further questions?

MR. NABATOFF: No further questions, Your Honor.

THE COURT: Thank you, Mr. Jacobs. You may step down.

THE WITNESS: May I be excused, Your Honor?

THE COURT: You may be excused, yes. Thank you. You say you have two more witnesses? Are they going to be brief?

MR. NABATOFF: They are brief.

THE COURT: Are they here?

MR. NABATOFF: They are here.

THE COURT: Let's go.

MR. NABATOFF: Call Joe Bradley.

(Pause)

Whereupon,

JOSEPH DOZIER BRADLEY

was called as a witness for the Government, having been first duly sworn to speak the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated. State you full name for the record, and spell your last name.

THE WITNESS: Joseph Dozier Bradley, B-R-A-D-L-E-Y.

THE COURT: Would you lean forward, please, sir, and speak up?

DIRECT EXAMINATION

BY MR. NABATOFF:

Q Where are you employed, sir?

A The Outdoor Shop in Tallahassee, Florida.

Volume 2-108 to cross examination of Mr. Joe Bradley manager of the Outdoor Shop, Tallahassee, Florida by petitioner's attorney, Mr. J. Mahorner.

A I don't recall giving him a receipt.

Q Okay. Do you have any writing that you wrote up at the time?

A There would have been possibly a receipt to the effect that the gun was left there and it was his gun.

Q Okay. And it was just -- do you remember back in November, Thanksgiving?

A (Nodded affirmatively)

Q Did you at that time record the serial number of the gun?

A No, sir, I don't recall writing down the serial number of the gun.

2nd Day of Trial of Petitioner -- Continued

Cross examination -- Vol. 2-117

of government witness Mr. Byrum

by Petitioner's attorney Mr. J. Mahorner

Q Did you later find out, regarding his being absent from the country.

A Through the United States Customs in New Orleans we found out that he had attempted to leave the country.

LOCAL/STATE Tallahasse Democrat newspaper
Wednesday, Dec. 19, 1984

City man allegedly linked

to paramilitary group

A Tallahassee man charged with a federal-weapons violation was linked Tuesday in U. S District Court to a paramilitary organization aiding rebels in Nicaragua.

But the attorney for the defendant - Jerry Sage Sammons - said his client denies he's connected to Civilian Military Assistance, which has been recruiting in the Tallahassee area.

Sammons, 48, is charged with receiving weapons after having been involuntarily confined to a mental institution. He could be facing up to 15 years in prison, federal prosecutors said.

During testimony Tuesday, officials also said that Sammons threatened Florida State University Law School faculty, staff members and students last year - apparently because the defendant, a former law student, was receiving poor grades. Sammons also allegedly threatened a police sergeant this

year. Sammons, however, has not been charged in any of these incidents.

Sammons, 48 was arrested last week by U.S. Alcohol, Tobacco and Firearms Bureau agents and Leon County sheriff's deputies.

The hearing Tuesday was only concerned with whether Sammons would be able to be released before trial. U. S. Magistrate Everett P. Anderson ordered Sammons to be held at the Federal Correction Institute without bond.

Tuesday, ATF Agent C.R. Byrum said Sammons and four others with Civilian Military Assistance had been pulled off a plane (bound for Honduras) in New Orleans.

Byrum said the men were detained by U.S. Customs agents because one of the four others - not Sammons - had two handguns with him.

CMA leaders say its main objective is sending non-lethal supplies, food and medicine to the so-called contras who are battling the Sandinista government in Nicaragua. The organization, which has been hailed by President Reagan, has been

recruiting in Tallahassee for people willing to train the contras in nearby Honduras.

The local recruiter, Fred Hening, could not be reached for comment Tuesday evening.

Byrum and FSU police Sgt. Bill Taylor also testified that Sammons had purchased about $700 worth of uniforms, back packs, tents and other supplies from a local outdoor shop - items which the CMA says it desperately needs.

Also, they said, Sammons had attempted to trade or buy his own weapons and ammunition and had told clerks at local army-navy stores that he was with the CMA.

A search of Sammon's home also yielded an operation manual for a submachine gun and ammunition which could fit that weapon, Taylor said.

Sammons was detained in June for his alleged actions at FSU and was eventually sent to Florida State Hospital. He was released four months later, officials said.

During this period, however, officials learned that Sammons had applied for a

concealed-gun permit from Leon County commissioners. In his permit application, Sammons said that he had not been arrested. But, Taylor said, he later learned that Sammons had been convicted of disorderly conduct and charged with stabbing a man in Georgia - but not convicted.

Sammons was charged with perjury, but these charges were later dropped after it was discovered the notary public handling the permit application had neglected to place Sammons under oath, Assistant State Attorney Joe White said.

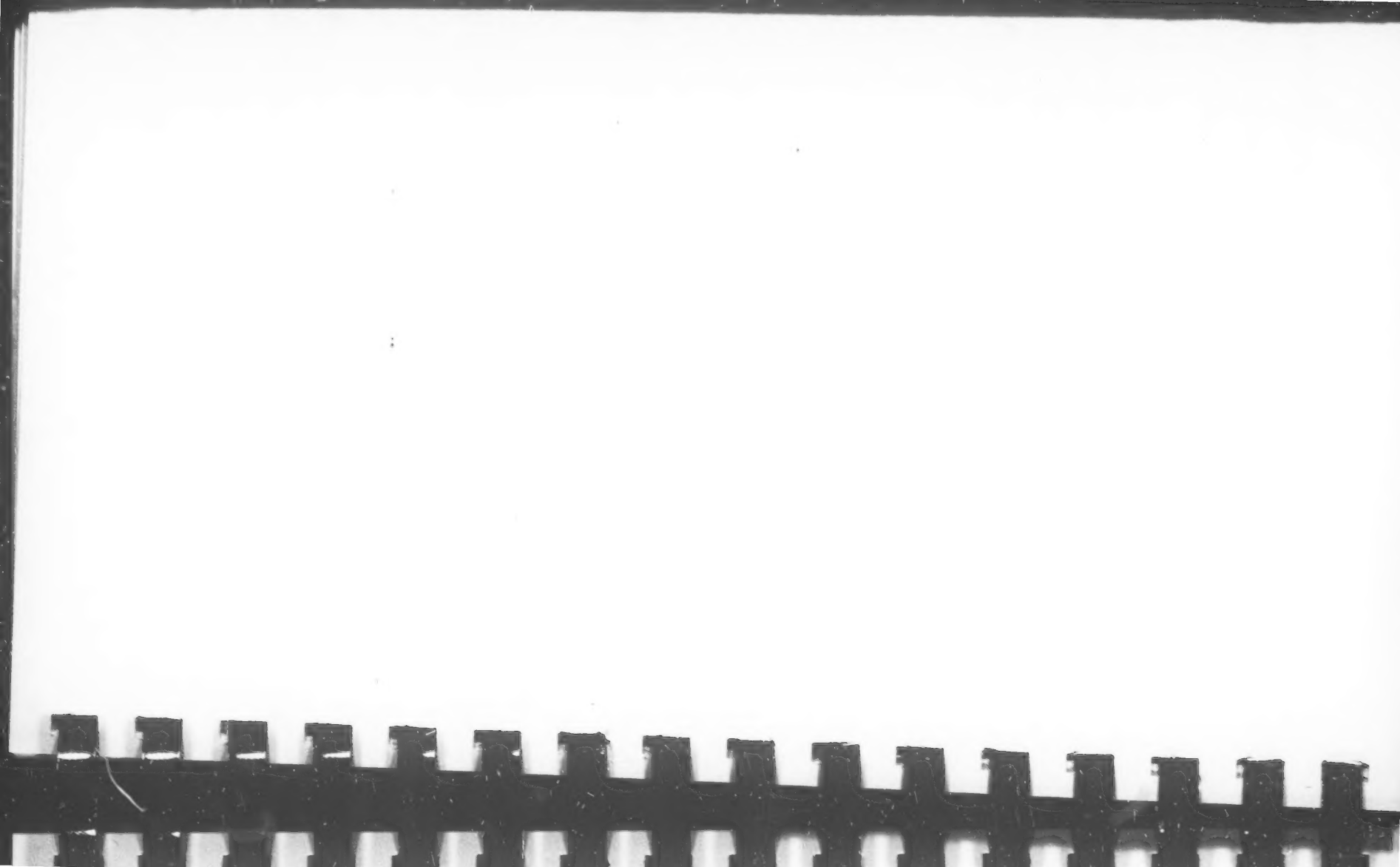
State officials eventually turned Sammons' weapons - two handguns and a shotgun - back to him.

Sammons' attorney, Richard Johnston, Jr., said the return of the weapons is the sole basis for the federal charge. He said it would be similar to arresting a speeder even though no speed limits had been posted.

In saying that his client is not a member of CMA, Johnston said Sammons had been in Honduras, but only as an "observer."

Johnston, who said he may appeal Anderson's no-bond ruling, also criticized authorities for still investigating Sammons after the perjury charge had been dropped.

State and federal officials declined to comment.



Letter sent to Tallahassee Democrat
Newspaper from prisoner (now petitioner)

Prisoner #08068017
Federal Correction Institute
Tallahassee, Florida
December 21, 1984

Tallahassee Democrat

Dear Editor:

I come now to your respected newspaper to ask in fairness that you give me the opportunity to defend myself against the articles that your paper has recently printed concerning me.

In your article of December 15, you stated that I had threatened Sgt. Bill Taylor of the Florida State University Police. Your article. Your article also said that the respected and Honorable Federal Magistrate Everett P. Anderson stated that I had intimidated his office. Both of these

respected government employees, one state, one federal had readily within their employment functions the right and the power to have me immediately arrested (neither did so). Relating to these two alleged incidents, I first address the charge by Sgt. Taylor that I threatened him. On the day in question I had gone to the FSU police on a sham criminal charge that I had misrepresented an answer to a question on a pistol permit purchased in Leon county that asked, "Have you ever been charged with a crime?" Since I assumed crime meant felony crime, I put no since I have never been charged for a felony crime. In relation to this question also your article on December 19 stated that I had been charged with a stabbing in Georgia. This was incorrect. You will note that the FBI computer known as the NCIC (National Crime Information Computer) shows no evidence of an aggravated assault by me.

In regard to the respected U.S. Magistr[illegible]'s statement that I had intimidated

his office, I can only say that I know not what the Honorable man speaks of. (I was not arrested on the charge.)

Your articles of both December 15 and December 20 border on an irresponsibility that I find hard to relate to my respect and high regard for your presentation of articles for the rights of the oppressed. Your article of both days allude to my association with a highly respected and valiant group of men in this country. I am not associated with this magnificent group of my fellow countrymen that have recently allegedly offered military advice to the oppressed people of Nicaraugua. While I am not formally associated with this respected group of American patriots I must state unashamedly that the group had my reserved respect before by recent trip to Honduras for observation purposes, and now after my return they have my absolute respect and admiration for the magnificent job that they seek to do.

Please allow me to state in response to one of your misrepresenting articles, that I have

never had in my possession a submachine gun. Sgt. Taylor of the forever protective liberal element FSU police is incorrect in describing printed material, that I did not know that I still had in my possession, as that of a submachine gun. The material, assuming that it existed as he said it did, describes a Mac 10 semi automatic pistol that I have not been in possession of since it was stolen from my home at Tybee Island, Ga. in June or July of 1983 while I was with the Georgetown University group on an intensive Spanish Language program at Catholica Universidad in Quito, Ecuador.

In regard to your statement in the Dec. 19 article concerning threats made to members of the faculty and staff at the FSU College of Law and the cause for the threats being poor grades that I was receiving, since I received my first grades just prior to the Christmas break of 1983 at the College of Law and since the alleged threats reported by the FSU police to the Florida State Hospital took place in Oct. of 1983, I assume that since I

had no grades at the time, any threats that I allegedly made were not grade actuated. The professors, if any felt threatened by me, waited several months for their neurotic fear to build to a fever pitch. Since I have never been allowed to face these respected progressive professors in a court of law, I assume that the fear they allegedly had was resolved when I was placed in maximum security confinement at the Cuckoo Nest in Chattahoochee. I was released from this facility on September 19 as not meeting the criteria for involuntary confinement under the Florida Mental Health Act, chap. 394, the Baker act.

I have been a wiser and much more cautious man after the horror that I went through from May 17 until Sept. 19 which was based only on an apprehension of harm by a few neurotic wimps. No overt threat was made and further yet no overt threat was alleged.

I stand now in a maximum security cell at the FCI in Tallahassee on a federal charge that I unlawfully had weapons in my

possession after being incarcerated in a mental institution. I was not aware that I could never again for the rest of my life have firearms in my possession. No one at the Florida State Hospital attempted to inform me of this potential danger to my freedom. I was not advised by the FSU police that alleges that I threatened them that I would be in violation of the law if I re-acquired my seized firearms. The State Attorney that pushed so hard on prosecuting my sham criminal and Baker Act charges did not inform me that I would be in violation of Federal law when I picked up the firearms be voluntarily gave to my private attorney, knowing they were to be returned to me. My private attorney, representing one of the most prestigious firms in the state of Florida did not advise me that when he handed my firearms to me that at that point I was in violation of a Federal law.

Much has been said in your paper about my association with the C.M.A. I have no association with this group, however, I had

occasion to speak with a local attorney who has knowledge of the C.M.A. This prominent attorney knew of my unfortunate summer excursion to the funny farm, he also knew of my possession of firearms. He did not advise me that I was in violation of U.S. law to have these weapons, which I assumed the U.S. Constitution gave me the right to have. In addition two other prominent Tallahassee attorneys were aware that I sought to get my firearms back. I stand now to be convicted and sent to prison for a crime that I did not know existed and further yet hardly anyone else knew existed.

I get a chill breeze blowing from the respected U.S. Magistrate's ruling on my probate hearing this week for bail bond. The respected Magistrate state that I can now be sent to the Federal Mental Health Facility that is the equivalent of the Florida State Nut House, in Springfield, MO for evaluation tests to determine my mental condition, for a period of up to 100 days.

Since May the 17, 1984 I have been subjected to the most extensive and intensive mental health evaluation. A considerable proportion of those evaluators felt that I did not suffer from any mental problem. I have taken no psychotropic medication nor have I received any treatment. I have indicated no harm to others or to myself. I have not before my incarceration May 17 indicated any overt harm to others or myself. In addition I have not indicated overt harm to others or myself since my release from the Florida State Hospital Sept. 19 Sgt. Taylor of the FSU police alleges only that my body language (whatever that is) indicated a threat to him.

In conclusion may I respectfully urge you to do the investigative work that your respected newspaper has a reputation for before writing other incorrect and possibly damaging articles concerning my recent experiences. I was never on, nor ever taken off a plane in New Orleans. Please do your

homework before raising your admittedly fearsome pen-sword.

Sincerely,

Jerry Sage Sammons

P. S. I welcome a visit by your reporting staff.

This letter included in petitioner's record at Florida State Hospital

Said letter forwarded by Secretary of Florida State Bar Examiners, Tallahassee, Florida, May 14, 1984

Memo for file re: Jerry Sage Sammons

Monday May 14, 1984

I was out front when the registrant came in with some questions about a recent MA we had sent him requesting amendments to his application. Mr. Sammons asked me if I could clarify the requests to him. He didn't seem to understand what we were asking. The MA requested that the applicant have notarized some previous information he had sent us scribbled on 4 papers of legal size, a photograph, and to provide a complete and detailed explanation of the arrests for DUI, Assault and Battery in 1974, and Simple Battery in 1983.

I began by explaining to Mr. Sammons that we require all information presented to the Board to be notarized, as it is part of your application. I had to explain that about 3 or 4 different times as Mr. Sammons kept interrupting me and wouldn't quite let me finish my explanation. Then I began to try and explain to him what we meant by a "complete and detailed explanation" of the arrests listed above. He again kept interrupting me and acted confused and perturbed, stating that there were so many arrests and that 1974 was a long time ago, and that he just didn't remember, and why should he have to go and explain it all to us when he already did the same for the GA Bar, and that he forwarded a copy of what he sent to the GA Bar to us, and what difference would it make if he just went out and crossed out the place where it said to the GA Bar and wrote in to the FL Bar...His thoughts and speech were quite disconnected and he had a tendency to ramble.

Meanwhile, I continued to try and explain to him why we require that each applicant/registrant explain all the incidents in the arrest in detail to us, etc. Finally, I offered to give him a copy of his response to Items 20 and 21 so that he could refresh his memory and see what arrests we were talking about. I had JA make me a copy of those items and bring his file out to me so that he could see his application.

While I was waiting for JA to bring the file, Mr. Sammons began to harrangue about the bar application process and his concern that some of the information he had given us in strictest confidence he had heard around FSW. I tried to reassure him that we hold everything in the utmost confidence and do not reveal any information to anyone. He remained skeptical and said that nevertheless the information was getting out. At this point I offered to call Mr. Moore for him as I knew he would be interested in this, if not wanting to handle the situation himself. Mr. Sammons said Oh, no you're doing a fine job;

I don't think it's necessary to speak with him, he's a busy man, etc.

I then went back and tried to explain the MA requests again. I still couldn't make him understand the importance of giving the explanations. And this time I insisted that I should call Mr. Moore, OK? And you can speak with him, I think he'll be able to explain it better to you than I can, etc. I then buzzed Mr. Moore and asked him to please come to the front. Meanwhile Mr. Sammons went on to say that how in GA all you needed to do was to slip the bar administrator some money and he'd let you take the exam, and I bet that happens in other places, too; Oh, not that you'd ever do a thing like that, but I've heard that it happens.

When Mr. Moore finally came out, he began to rebuke Mr. Sammons for wasting my time and that the staff was not allowed to go over the application item for item with the registrant/applicant like I was doing. Mr. Sammons said that he just had some questions that he wanted to clarify with us, etc.

pertaining to the arrests. Mr. Moore went into the standard blub about how we would be happy to answer all your questions, but we prefer a written communication, etc. Mr. Sammons again interjected that he just had a few questions; Mr. Moore told him to put it into writing; Mr. Sammons threw up his hands and left in "a huff."

I'd like to point out that at no time was Mr. Sammons hostile or abusive with me. On the contrary, he was overly apologetic and for not understanding what we wanted and diferential. I had a funny feeling about him, though, from the moment he walked in. He struck me as being quite strange, his soft-spoken mannerism, deferential attitude, disjointed way of talking, constant rambling, changing the subject, and his inability to understand what I was trying to explain to him, as well as his apparent inability to clearly express what it was he wanted <u>me</u> to explain to <u>him</u>. He made me nervous, and so I buzzed Mr. Moore.

STATE OF FLORIDA

COUNTY OF LEON

SYLVIA BATES, being first duly sworn says: The foregoing is an accurate recollection of the events regarding Jerry Sage Sammons t the best of my knowledge

Sylvia Bater

Sworn to and subscribed before me this 17th day of May, 1984

Kathy Rind

Notary Public

During a recent call by me to Mr. Moore, director of the bar examiners, he assured me that his office took no part in my Baker Act, proceedings. This letter is taken from my Florida State Hospital records.

Jerry Sage Sammons

Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

-vs- TALLAHASSEE CRIMINAL
85-07006-WS

JERRY SAGE SAMMONS,

Defendent

TRANSCRIPT OF SENTENCING

The above-entitled matter came on to be heard before the Honorable WILLIAM STAFFORD, Chief United States District Judge, in the United States Courthouse, Tallahassee, Florida, on the 23rd day of August, 1985, commencing at 8:45 a.m.

APPPEARANCES:

For the Government: ROSS A. NABATOFF
Assistant United States
Attorney
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THE COURT: Please be seated.

Mr. Sammons, come foreward, please

Mr. Mahorner.

Mr. Sammons, you were tried in this court and found guilty. The Court direct a presentencing investigation be undertaken, a report submitted. I now have that report. The matter is before the Court for sentencing. A copy of this presentence report I believe has been furnished to you, Mr. Mahorner, and you have had an opportunity to review it; it that correct, Mr. Sammons?

MR. SAMMONS: That's correct.

THE COURT: Before pronouncing sentence in your case, Mr. Sammons, the Court affords you the opportunity to address the Court.

And, Mr. Mahorner, as his counsel, of course, you have the right to speak in his behalf. Mr. Sammons is not required to speak. This is the opportunity, Mr.Mahorner, for you and your client to address the Court

and present any matters in mitigation of punishment.

The Government has the equivalent opportunity to speak.

MR. MAHORNER: Mr. Sammons wishes to speak, Your Honor.

THE COURT: All right. Let me--first of all, have you reviewed this presentence report?

MR. MAHORNER: Yes, sir. One error we have agreed should be correct, Mr. Nabatoff and myself. If you could turn to Page 2 at the bottom, next to the bottom paragraph, where it says "subsequently in October 1983 Mr. Sammons"--if you will just complete that, Your Honor.

THE COURT: where was that? Oh. Okay.

MR. MAHORNER: I called Dr. Yetter yesterday because I happen to know him, and I knew it would not upset him. I did not call the other gentlemen, Mr. Randolph Thompson. I did not know him, and I did not want to

upset him. Dr. Yetter had told me that Mr. Sammons did not discuss it with Dr. Yetter.

Mr. Nabatoff called Dr. Yetter this morning. Mr. Nabatoff and I have agreed that that part of the presentence report is in fact inaccurate.

MR. NABATOFF: (Nodded affirmatively)

THE COURT: So Professor John Yetter's name comes out of there, right? Is that what you're saying?

MR. MAHORNER: Yes, sir.

THE COURT: Okay.

MR. MAHORNER: Now, it potentially says--it says some potential problem on the arrest, but I have no verification that there is any problem on the arrest.

THE COURT; Okay. All right.

Mr. Mahorner, you and Mr. Sammons, this is your opportunity to speak.

THE DEFENDANT: If I have a chance to, Your Honor. May I, Your Honor?

Your Honor, I talked to Dr. Leach at the Federal Hospital in Springfield, and I asked him a question. I said, Dr. Leach--.

THE COURT: Mr. Mahorner, don't you leave.

MR. MAHORNER: No, sir. I'm not leaving, but my client really feels that he would like me out of the picture at this point, Your Honor, and I want to honor that as much as possible, while at the same time I have a duty to this Court. I want to sit at the--I will--.

THE COURT: I want you to stay.

MR. MAHORNER: I will sit at the table.

THE COURT: All right, sir.

THE DEFENDANT: I asked Dr. Leach, I said, you know, you can find me mentally competent and send me back for trial right away. He said I can--immediately he said I can, but I won't. I've got a couple of questions very briefly, in absolute respect for this Court. I would like to ask if you read the letter I sent to you calling

attention to certain things that in my opinion should have asked you to overturn this decision and rule not withstanding the verdict of the Court and the jury.

THE COURT: Mr. Sammons, let me tell you, as I have to occasionally tell lawyers in trial, everybody has a role to play. The lawyers ask the questions, the witnesses respond. Rarely does the judge do either. Occasionally the judge can ask questions. Not too often is the judge interrogated, and I don't intend to be interrogated by you.

I can tell you, sir, that I have read what Mr. Bruner has prepared. He has forwarded to me some documents that you asked him to send to me, and I have read them. Okay?

THE DEFENDANT: All right, sir. If I stand here and run my mouth, would it do me no good, and maybe even harm for me to call attention to these things? If you say it's best left unsaid, I will just back off and say nothing about this.

THE COURT: Mr. Sammons, let me tell you what this procedure is. Any legal challenges you have to any rulings that I made, any--any questions of law where you think I am in error, that is better addressed, in fact it must be addressed to the Court of Appeals. My function here is to pronounce sentence. The Rules of Procedure provide that at the time of sentencing both counsel for the Defendant, counsel for the Government and the Defendant have an opportunity to speak to the Court on matters. So that's--that's what this--that's what this procedure is. it's an opportunity for you to tell me what you want to tell me in connection with the sentencing decision that I must make. You know, this is--I can't delegate this to any special master or any magistrate. Indeed, the appellate court cannot do the same. It's a responsibility by law that rests with the trial judge. that just comes with the turf. It's something I've got to do. Whether I enjoy it or not is quite beside the point. It's just part of my

job. And I am required to provide you this opportunity, and you you can use it or not. And that's--that's entirely your call. And so now that you, I hope, understand where everybody sits at this point under Rule 32, then, you know, if you want to speak, I will listen to you. But this is not a question and answering session for the court, and I'm sure you are familiar enough with the rules to know what this procedure is all about.

So what do you have to say, if anything, that you think should impact on my sentencing decision? I don't want to limit what you are going to say, but I have the benefit of this present report and the material you submitted. Of course, I presided at the trial. I made a lot of rulings in the case.

Okay. I will quit talking, and it's your turn.

THE DEFENDANT: Well, sir, I hope I don't talk too much. Sometimes I let my mouth overload things.

THE COURT: Those are your words. I can't disagree with you.

THE DEFENDANT: Most people would.

Then it's a moot question, the trial is over, it's now based just on sentencing? the trial is all but over, as far as any decision you would make as to judgement notwithstanding the verdict of the jury; is that correct, sir/

THE COURT: Any motions that are filed, I will rule on, I am required to rule on, but I don't have anything in front of me now. i think I have cleaned up all of the pending motions. I tried to do that before sentencing. Obviously if I granted a motion for new trial, there would be no need for sentencing, because we would wipe the slate clean, pick 12 more jurors and start from square one. But I think I have disposed of all the pending motions in the case, and we are now up at the time of sentencing. Okay?

THE DEFENDANT: You have answered the question. Thank you very much, sir.

THE COURT: All right.

THE DEFENDANT: I have a couple of questions as to the legality, should you be kind enough to grant me probation about the legality of reacquiring firearms in the State of Georgia that were manufactured in the State of Georgia? One year of law school has not prepared me for this, sir. The Ingram Mack-10 that the U.S. Government says was a submachine gun was a semi-automatic pistol, but that gun was manufactured in the State of Georgia. Am I allowed to obtain that weapon again? It's not interstate transported if I receive it.

THE COURT: Well, I'm not making any decision on anything at this point. I came in here to listen to what you and the Government and your lawyer have to say before I decide what kind of sentence I can impose on you. I can start from the maximum on down to, you know, the one day probation. So this is what--this is what this is, an opportunity for you to tell me.

THE DEFENDANT: That question was inappropriate, sir, and was a moot question,

inasmuch as I have no desire to reacquire the firearm, in any case, so probably should have been left unsaid.

On the presentence report, sir, just glancing over it as I was able to, on Page 2, sir, I don;t know if Mr. Mahorner just addressed this or not, sir, as to the students laughing at the Defendant and then the Defendant calling students names. This was inaccurate, sir. I don't think there had ever been any laughing. A lot of dissention, as you would find in the first year of law school, I think that was inaccurate, sir. And I didn't call students names. I was referring to, if you will forgive me, sir, liberals in general, not just students. And it occurred in October of 1983, sir, the one and only time that anyone has said anything like that before or after, one time, sir.

THE COURT: Well, you understand, of course, that what is in this presentence report is the complaint that was received? Obviously the complain could be accurate or inaccurate. But the--Mr. Bruner is required

to report what is told to him. And he got that from Mr. Nabatoff who obviously got it form the school who took, I suppose, some kind of complaint over the telephone or something like that, and I understand that, and I hope you give me credit for having a little bit of sense. Everything that's originally reported that's a complaint is not necessarily so. Okay. I got your point. Let's go.

THE DEFENDANT: All right, sir. On Page 2 as to firearms in class. Maybe you called my attention to something that you just told me that you are well aware of here that might be a misrepresentation of fact in this document that you received.

THE COURT: Well--.

THE DEFENDANT: If so, I would like permission, sir, to call your attention to it.

THE COURT: That's what this is for. You dispute some of these things in here, let's hear it.

THE DEFENDANT: As to Item B, as to firearms in class, the Florida State Police Department investigated and they found no firearms. I believe that's correct, sir. They found no evidence of firearms, nor has anyone ever seen a firearm in the classroom.

THE COURT: I understand that.

THE DEFENDANT: Yes, sir. And I think the U.S.Attorney and Mr. Mahorner has just agreed that the statement made by -- allegedly by Professor Yetter is incorrect, and you have just addressed that, sir. And I was going to call attention to that, but that's been addressed.

Now, I have Item C, sir, on Page 2. May 15th, 1984, statements were made as to uttering more statements as to being an American Indian out to take coup. That is grossly inaccurate, sir. I have in the documents you have, I finished up the letter to the professors just prior to being picked up and sent to the state nuthouse. I never called attention to being an American Indian. You have the page, sir, at the conclusion of

the letter to the professors addressing that. I did not do that, sir. To take coup as an American Indian, was not to be that I was an American Indian. It was simply a symbolic statement made by me to the professors.

All right, sir. The statement allegedly made on May 15th, 1984 also as to students being rabid mad dogs that needed putting away, and that they were pee ants that needed stomping; it was part of a letter that was sent to Professor Oeltgen, the one letter, sir, in or about October of 1984. It was taken out of context and misrepresented as to certain things said. I did not talk about putting away students in any way. And I will respectfully like to call this Court's attention to the fact that about December I sent in an insignificant amount of money, $250 check to the emergency school fund for students, that was my feeling for my fellow students. I have no animosity. I don't think I addressed it. This letter was a personal letter to Professor Oeltgen, a personal letter I sent to him.

And may I respectfully call attention to the fact that a psychologist for the Florida State Hospital viewed these letters and other documents and said there was nothing threatening, in her opinion, in these documents. That also is a matter of record at the Florida State Hospital, sir.

As to behavior change, sir, about the same page there on the presentence report. I was in Professor John Yetter's second criminal law class at the time with your clerk here, sir, and I had offered to get documents -- I'm just calling attention to behavior changes allegedly made. I went to Senator Sam Nunn, I went to many legislators and tried to get documents to be sent to my internation law class to help my fellow students. That's the kind of harm and threats I made to my fellow students, sir. I don't know that what some of these documents may have been sent and maybe now in the possession of the law school library. That was my intention to do this, sir.

As to the next, Page 3, sir, the seizure of the weapon by Sergeant Taylor was made after I had requested the right to call counsel. And I do not deny that I voluntarily gave the weapons to Sergeant Taylor, sir, but it was only done, sir, after I requested the right to call counsel and was denied this right and was not read the Miranda right. I do in court say that the man is exactly correct, I did ask him to take guns. I didn't even know what was going on. I said I can't believe this. I didn't know what was going on. And I was afraid my guns might be stolen. I was being sent to jail. I didn't know Sergeant Taylor was with the FSU Police Department. He didn't identify himself as an FSU policeman until we were nearly to the FSU jail.

It's just time to calm down a little bit, because I want t call attention to what went on in the trial.

THE COURT: You understand what you were tried for in this court, that was after you got out of the hospital, you came into

possession of these guns? You know, all of this is -- I will sit here, you know, and listen. I hope at some point you are going to get to this particular offense.

THE DEFENDANT: All right, sir. I will try to be as brief as possible with this. I am burdening your time, sir.

THE COURT: No. I've got as much time as you reasonably need, Mr. Sammons.

THE DEFENDANT: I would like especially to call attention, sir, to the alleged threat made to Sergeant Taylor. I find myself growing ill that it's repeatedly been reviewed throughout the record as something I said, that it would not be as easy as it was the first time to come get me, because Sergeant Taylor should be aware that I said to him, because I know now as much about Chapter 394 of the Florida Mental Health Act as you or anyone else. And in no way did I intimidate him or in no way lunge at this man or in any way intend to do any harm to him, sir.

In relation to this, also, on the same page, Page 3 there, the U.S. Government has said there was seized paraphernalia, including a manual for a submachine gun, sir. This is simply inaccurate. The manual was for an Ingram Mack-10 semi-automatic pistol, sir. And if others reviewed this record, the presentence report of what the Government said, it's going to be a misrepresentation of fact. It was not a submachine gun manual, nor have I ever owned a submachine gun, nor desire to have one, sir.

Now, getting to Page 6, if I may. On the arrest record, Mr. Bruner has been kind enought to try to explain this to me, but I must confess, in my opinion, unsuccessfully, sir. On 9-2-64 there is something brand new here that I have never seen before, it's a simple assault allegedly occurred in Leon County. The disposition, there was non located. I'm not aware of such -- such a charge of that ever.

THE COURT: That was Jacksonville.

THE DEFENDANT: Did I say Leon? I meant Duval County, Jacksonville. I'm unaware of such assault, if, in fact, it did take place. And I'm not here to question you, you already indicated that's not your function to answer my questions, but the FBI computer, and other places, I have friends with the GBI, as you may not know, Judge Edenfield is a personal friend of mine in Savannah, the federal judge there, nobody has been able to find a record on the rap sheet that would show anything like this. Mr. Bruner has told me, sir, this was included, '85, 1-1-85, January '85, this was placed on my rap sheet report along with the thing occurring in Leon County. I don't know how to explain this. I know it was a clear rap sheet prior to this time, sir. If it in fact occurred, the simple assault, I'm not aware of it, sir.

The other incidental thing, such as operating --.

THE COURT: How about the one in Chatham County, Georgia?

THE DEFENDANT: Which one is that, sir? Aggravated assault?

THE COURT: Uh-huh -- no, threatening battery of a witness.

THE DEFENDANT: It must have been a misdemeanor. It was a domestic situation, my wife, I married her shortly thereafter. I will explain that in detail, if you have the time to listen.

THE COURT: All right. Domestic squabble.

THE DEFENDANT: $50 fine. I don't think the -- a misdemeanor. Not a record, either. I had to go to Garden City, not Chatham County. It was in their court records only, no where else. A friend of mine with the GBI has been able to find one of these things. The Florida Bar Examiners sent me to locate them, and I went knocking on doors, and which I will now have to do with the simple assault in Duval County. I would assume the FBI would not be inaccurate, and I will have to go locate people to find

out what happened, when, where and so forth, sir.

As to -- I think it's Page 8, sir, as to my ex-wife, Connie, referred to me going to see a psychologist and being emotionally unstable. That is a value judgment on her part. And, of course, she is entitled to that. And after 20 years of divorce I still have a good relationship with my ex-wife. But I would like to say, sir, that I did not go see a psychologist at the time. We went to see a marriage counselor in the church trying to keep our marriage together.

On Page 9, sir, Dr. Royce Jackson called attention to Defendant meeting the criteria for Baker Act proceedings. I don't know if it's worthy of even consideration at this point, but Dr. Jackson was sent by Judge Charles Miner to see me without my knowledge. He has placed in the court record, in the state record, that I requested Dr. Jackson to come in and see me. That is incorrect, sir. I did not. Dr. Jackson has said there are no

reports or further information to provide. So I assume that Dr. Jackson's opinion or his statements made as to meeting the criteria for Baker Act proceedings took place after ten minutes he saw me at the Leon County Jail, sir, which is the only time he saw me.

This, sir, is going to be a little more controversial, and I beg you to be tolerant as I go through these things. Dr. Valenzuela did not find me to meet the criteria for involuntary confinement, sir, and there were others that did not find me meeting the criteria of involuntary confinement. According to state law, if there is a disagreement of opinion, sir, the person must not be deprived of their liberty, but yet I was. And i know that might not be something you would consider here.

THE COURT: I understand your position.

THE DEFENDANT: It ought to be ignored, sir. Time and again --.

THE COURT: I can't. Mr. Sammons, being the student of history and politics

that you claim to be, you must have some appreciation for the nature of the federal system in which we operate, which the State of Florida is sovereign, and this Court has its exclusive jurisdiction, and they have their job to do and I have mine to do. Whether they think I do mine well or whether I think they do theirs well is again quite beside the point. And I think that is all I needed to say in that regard. I understand exactly what you are saying. I am reading the same words that you have read. I also know that psychologists and psychiatrists have differing opinions, and appellate courts exist because sometimes judges have different opinions. But I cannot undo what has been done. I am looking at the facts of this case as they exist as of August 23, 1985. If this is not an accurate representation of -- of what took place, fine. The consequences in whether somebody in the state system did or didn't do their job correctly, or whether you feel you got flim-flammed or something,

that's something I cannot undo, you understand?

THE DEFENDANT: No, sir, that -- you are calling attention to something -- to me here now, you are educating me, because I thought it was your authority to overrule any state action taken, if it's in violation of the constitution, sir.

THE COURT: Well --.

THE DEFENDANT: I thought you could overrule that. That's how simplistic one year of law school makes a man. I'm aware of that and --.

THE COURT: Well, let me tell you, if it's any comfort to you, we have lawyers come in here, people who have finished law school and passed the bar and think that we sit as some sort of ultimate supreme court. No. Federal court is a court of limited jurisdiction, and we operate under the grant of authority given to us under the Constitution and the Acts of Congress. And if there was any doubt about it, the Supreme Court, the last 15 years, cases of Younger v.

Harris and those progeny from there have told my colleagues and me to keep our hands out of state court proceeding, that the state has its exclusive jurisdiction. And I don't mean to be giving you, you know, a 30 second lecture on the current state of choice of -- choice of forum, state-federal jurisdiction, anything else like that, but -- and I am trying to reorient your thinking here to understand our function today, and that is whether, regardless of what I may think about this prosecution or any other prosecution brought before me, the United States Attorney, as the representative of the executive branch of government, has the responsibility to prosecute cases. I don't tell them what cases to prosecute, they don't tell me how to rule, and they don't tell me how to sentence. We each have our job to do. And as long as everybody keeps that in mind, then I think, you know, the republic survives.

It's just that when the court begins to meddle in prosecutorial matters and

the executive starts to infringe upon the few prerogatives that the third branch has left, or we both try to legislate and usurped the function of the first branch of government, then things get out -- get out of alignment. So I am here to do what I am required to do, and that is impose a sentence. And the law says you have a right to address the Court on matters that will affect your sentence, matters you think should be brought to my attention that will influence my decision in the sentencing process. This is not a time to file an appellate brief or to make an appellate argument or anything else like that. Those have -- those are provided for under the rules, and they have their day and they have their schedule when those things should take place. Okay?

THE DEFENDANT: I try your patience, Your Honor. Forgive me.

THE COURT: You are not trying my patience. I think what you are doing is probably not serving your best interest at times. And, you know, you're a grown man,

and I -- I am hardly in the place to be giving you any, you know, paternal advice. That's not one of my jobs either. Those fellows that wear their collar the other way get paid to do that. But your -- you have the opportunity to speak, and I am here to listen. I do have another trial that does -- you know, is entitled to receive some of my time, but do you have anything else you would like to say?

THE DEFENDANT: Yes, Your Honor. My mother is being operated on at 11:00 this morning in Savannah, Georgia, and regardless of what decision you should make, I would request your authorization to go to Savannah, Georgia to sit with her this afternoon to resolve a few other incidental problems, should you find me to be -- .

THE COURT: All right. Are you living in Savannah now?

THE DEFENDANT: That, with authorization of Mr. Bruner.

THE COURT: I understand that. He told me you have been most diligent in keeping him posted on your movements.

THE DEFENDANT: Also, Your Honor, should you see -- should you feel that I should undergo any counseling, may I respectfully request it be done in a church type atmosphere or with a personal friend who teaches psychology at Savannah State College? I absolutely have complied with every ruling you make, Your Honor.

THE COURT: Do you have anything, Mr. Mahorner?

MR. MAHORNER: Yes, sir. I would like to put the Government representative on the stand for just two questions. That will take very little of the Corut's time.

THE COURT: Who is that?

MR. MAHORNER: The gentleman with the firearm's department.

THE COURT: All right, sir.

Whereupon,

COMMIE R. BYRUM, JR.

was called as a witness for the Defendant, having been first duly sworn to speak the truth, the whole truth, and nothing but the truth was examined and testified as follows:

THE CLERK: Please be seated, and state your full name for the record.

DIRECT EXAMINATION

BY MR. MAHORNER:

Q Would you state your name for the record, sir?

A Commie R. Byrum, B-Y-R-U-M, Jr.

Q Were you the Government representative in this case?

A Yes, sir, I was.

Q You heard the evidence throughout the case, did you not? You were in the courtroom?

A Yes, sir, I did.

Q Did you hear about the gun shop incident where the Defendant had some guns in a gun shop? Do you recall that?

A Yes, sir, I do.

Q Do you have any personal, do you, yourself, as to whether those guns were the same guns

that the Defendant had received from Sergeant Taylor or had the same serial numbers?

(Pause)

A Only that they were described as the same type of weapons.

Q Okay. But you don't know otherwise?

A As far as by serial number, I do not do.

Q All you know is they were the same type?

A Yes, sir

MR. MAHORNER: Thank you. We have no other question.

THE COURT: Any questions?

MR. NABATOFF: No questions.

THE COURT: All right. Anything further, Mr. Mahorner?

MR. MAHORNER: Could we stipulate that Sergeant Taylor's testimony is the same? Is that all right to stipulate for the record?

SERGEANT TAYLOR: If I understand the question; that's correct.

THE COURT: Anything further?

Government have anything to present?

MR. NABATOFF: No, Your Honor.

THE COURT: All right. Come forward, Mr. Sammons.

Mr. Sammons, I now adjudge you guilty as charged in the indictment that was returned against you and in which the jury found you guilty.

Let me tell you this, Mr. Sammons: I have read so many reports on you, and you are a most unusual person. As I told you at the time I let you out on bond following return of the verdict, then I think -- and I, in the vernacular, i just think you are sometimes your own worst enemy.

I thought long and hard and -- about this case, because it's one that has certainly spent an awful lot of my time because of the unusual nature of it. And I have some feeling, Mr. Sammons, that you are entitled to some sort of chance here, but I want to lay it out for you right up front. Whether it's a personality quirk or whether it's just some deep felt political beliefs or what it is, your behavior at times in the

past has caused concern. I must share with you conversation I had with a man who used to be on one of the appellate courts here in Florida, his daughter who had recently divorced came to law school, and he told her two things. First, just remember I am not going to grade your papers. And the second thing is your most important duty as a first year student is to get to be a second year student.

And what I am suggesting is regardless of what any of us who have ever darkened the door of a college or a law school may think of our teachers, whether we agree with their political philosophy or not, whether there are too many liberals, too many conservatives, too many left-wingers, too many rednecks, too many middle-of-the-roaders, whatever, in the student body, whatever you think about the faculty, particularly law school is generally a game of survival. And as many of the experienced who have cycled through here have said that, you know, you answer the law

school test like you think they want an answer, and then when you get out in practice you do what you want to do. But without that ticket you don't take the bar exam and you don't get to practice. But, anyway, that's just some observations while walking through the library type of comments.

You have -- you have the ability to get people pretty upset at you. Now, whether there was an overkill here or not is again beside the point. This has been a very unusual case, the nature of the prosecution and the way this thing developed. I don't know whether you have benefitted from it or not. I'm not convinced in my mind, and I could be wrong, I'm not convinced in my mind that you are inherently a dangerous person. I just think you have political beliefs that you want to share and perhaps are a little intolerant of other people who may not agree with you, perhaps seeing the opposition as a raid against you in positions of authority. And, as I said, you are -- if you -- maybe if you develop lockjaw you would get along fine.

But you must understand that all of these people have their jobs to do, and, you know, if you go out looking for trouble you are going to find it. You walk into any place, if you want to pick a fight, you know you're going to find some taker that wants to prove he's more macho than you. They did it back in the old west, and we still see John Wayne and Gary Cooper and those fellows doing it on the reruns. But we live in a little different type of society, and particularly you, who wants to enter the legal profession. So I want you to understand that I really am think about putting you on probation, and what I want you to understand, Mr. Sammons, is if I put you on probation, you are not writing the script on this thing, you are going to be under the supervision of the Court. And I want you to know that Chief Judge Alaimo is a very good friend of mine, and I'm very well acquainted with Dudley Bowen and Avant Edenfield, and I don't want to be passing any of our problems to any of those three fine judges of that district in

Georgia, and I can tell you that if -- if I hear any problems like this I will request the Chief Judge of The Eleventh Circuit to assign to that district in Georgia to hear your probation revocation, so that any advantage you may think you have in dealing with a Georgia judge will be eliminated. I have great integrity in them, but I don't want to pass my problems onto them.

Now, I am not -- I am not putting you down. I just want you and me to understand each other, that you do need some counseling, you need some evaluation counseling and treatment for some sort of session, improvement session. Those aren't going to be yours to decide, that' s going to be under the direction of the Court.

Now, you were ballyhooing to Mr. Bruner here earlier during the preparation of this presentence report that you weren't going to be -- if somebody was going to order you for any kind of counseling treatment, you would rather go to jail. I haven't yet announced the sentence and I haven't yet

signed the judgment and commitment, and I can flat send you to jail. I don't think you belong there, but, you know, there's probably a lot of jail that maybe don't belong there, but we got nothing else to do with them. So if you tell ne now that under no circumstances are you going to attend and take counseling as directed by the court, it may or may not be your buddy who is in practice in Savannah, but you don't make that decision. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Now, you have conducted yourself, as far as our probation office is concerned, extremely well. You ave been very punctual, been very attentive to everything Mr. Bruner has told you to do, but I did get disturbed about the fact that you were throwing down the gauntlet saying, you know, let me take a walk, or send me to jail, I ain't going to take anymore of this foolish counseling. Well, all of us need somebody talk to, some of us need more help than others, and some of us need help of a

different kind. This is a type of thing that I think you need. You have been through all of this, you know, at the state hospital here and in Springfield and all around, and I think we have got a pretty good background on you.

So are you -- are you -- do you stick to that previous statement you made to Mr. Bruner, that you absolutely refuse to take part in any kind of court ordered counseling at all?

MR. MAHORNER: May I talk to him before he answers that question? Do you mind, Your Honor?

THE COURT: All right.

MR. MAHORNER: It will just take a minute.

THE COURT: All right.

(Discussion off the record)

MR. MAHORNER: Your Honor.

THE COURT: Yes, sir.

THE DEFENDANT: I think may attorney was a little too concerned, so I have expressed to Mr. Bruner before that I

would comply with the rules of the Court. So it's my intention to continue in that respect.

THE COURT: He told me that just this morning, but I wanted to make sure it's on the record.

All right. Mr. Sammons, it's adjudged that the Defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of five years. The execution of the said sentence of imprisonment is hereby suspended. The Defendant is placed on probation for a period of five years upon the standing conditions of probation of this Court and such other conditions as may hereinafter be imposed.

Special terms and conditions now imposed are these:

That you attend and participate in evaluation counseling, treatment and self-improvement sessions as approved and directed by the supervising United States Probation Officer at his -- at your expense.

Do you understand that? We pick the doctor, we pick the thing, but you pay the bill. Is that understood?

THE DEFENDANT: Yes, sir.

THE COURT: That you shall not possess a firearm or other dangerous weapon.

And that, as the Act of Congress now requires, you pay a $50 monetary assessment.

So I have given you a sentence of five years, the execution of that sentence suspended. It would be five years probation with the special condition and the standing conditions and the $50 special assessment.

Now, you have been -- I have just sentenced you on a case that went to trial upon your plea of not guilty. I now advise you under Rule 32 of the Federal Rule of Criminal Procedure that you have the right to appeal. And if you are unable to appeal -- pay the cost to appeal, you may apply to this Court for leave to appeal in formal pauperis. And if you so request, the clerk of this

court will prepare and file forthwith your notice of appeal.

Anybody have any questions?

THE DEFENDANT: Yes, sir.

THE COURT: I have thought about this thing, and it's -- this is the sentence I think is appropriate. Now, you understand, of course, that if you don't comply with these conditions, your probation will be revoked and you are going to prison? I mean, it's just that simple. All right?

THE DEFENDANT: Yes, sir.

THE COURT: I'm willing to take a chance on you because I think you are entitled to it. But from here on, Mr. Sammons, you know, you write the ticket.

All right, sir.

THE DEFENDANT: As to the appeal, sir, just how much time do I have before the appeal is exhausted, the time limit? Someone says 10 days, the clerk says 30 days. How much time, sir, do I have?

THE COURT: I'm not supposed to give legal advice. Let's see. I will let you look at the rule book.

THE DEFENDANT: I thought the rule book told me 30.

THE COURT: Mr. Nabatoff, what's your --?

MR. NABATOFF: I'm not -- I believe he has 10 days to file his notice of appeal.

THE COURT: I think it's 10 days from the time judgment and commitment is filed. You know, if I can ever get out of this courtroom, I will probably sign one, so that will either be today or sometime next week.

God go with you, Mr. Sammons. Anybody else have any question?

MR. NABATOFF: No questions, Your Honor.

THE COURT: All right.

(Sentencing concluded at 9:33 A.M.)

I N D E X

PAGE NO.

	DIRECT	CROSS	REDIRECT	RECROSS
WITNESSES FOR THE DEFENDENT				
COMMIE R. BYRUM, JR.				
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CERTIFICATE OF REPORTER

* * *

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, W. PAUL RAYBORN, CSR, RPR, United States Court Reporter at Tallahassee, Florida, do hereby certify as follows:

THAT I correctly reported in shorthand the foregoing proceedings at the time and place stated in the caption hereof;

THAT I later reduced my shorthand notes to typewriting, or under my supervision, and that the foregoing pages numbered 1 through 29, both inclusive, contain a full, true and correct transcript of the proceedings on said occasion;

THAT I am neither of kin nor of counsel to any party involved in this matter, nor in any manner interested in the results thereof;

THIS 11th day of February, A.D., 1986

/s/

W. PAUL RAYBORN, CSR, RPR

United States Court Reporter